

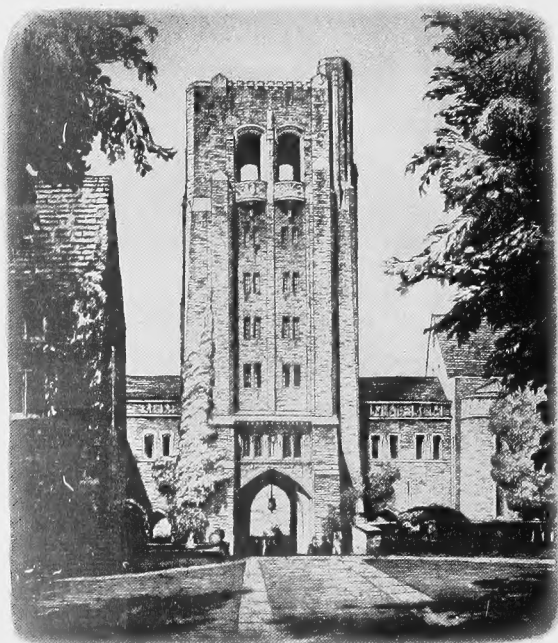


K

1875

B78

1913



Cornell Law School Library



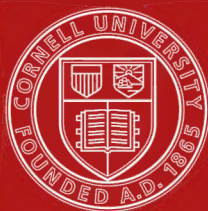
Cornell University Library  
**K 1875.B78 1913**

**A treatise on the law of compensation fo**



**3 1924 021 964 055**

law



Cornell University  
Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.







**A TREATISE**  
**ON**  
**THE LAW OF**  
**COMPENSATION**  
**FOR INJURIES TO WORKMEN**  
**UNDER MODERN INDUSTRIAL**  
**STATUTES**

**BY**  
**JAMES HARRINGTON BOYD, A. M., Sc. D. (Princeton)**

**Chairman of the Ohio Employers' Liability Commission**  
**and Member of the Toledo Bar**

**INDIANAPOLIS**  
**THE BOBBS-MERRILL COMPANY**  
**PUBLISHERS**

*B 1632*

COPYRIGHT 1913.

By JAMES HARRINGTON BOYD





## PREFACE

---

During the last four years Workmen's Compensation and Industrial Insurance Laws, creating the new and fundamental principle of compensation and insurance for injuries to workmen, have been enacted into statutes by the United States, with special relation to Federal employ  s, and by many of the states of the Union. Special commissions to investigate the subject and report recommendations have been appointed by many of the state legislatures and it seems not unreasonable to predict and it is to be hoped that within a decade the principle will have been accepted by all the states.

The principle of compensation is of German origin and is an evolution of the thought and purposes of the philosophers, economists and statesmen of that great nation. Its merits have been established by more than thirty years of practical and successful operation on a large scale in that country. Substantially all the civilized nations of the world have followed the German plan.

It is the purpose of the author to point out and distinguish the characteristics of the different remedies for the relief of injured workmen—the Common Law Remedy, Employers' Liability Laws, Workmen's Compensation and Insurance Acts; to show the economic effects of the operation of such laws from an ethical, social and political point of view; to trace the historical evolution of these laws; to analyze their constituent elements and point out the fundamental legal principles upon

which these laws must be founded under our constitutional limitations and finally to give a complete account of the schemes of procedure and administration employed in the practical operation of these laws in our country. If permanency is to be assured legal principles must be based upon sound economic conclusions.

It is both a duty and a pleasure to acknowledge the indebtedness of the author to the various officials and boards charged with the administration of the law in the various states and the officials of the Department of Commerce and Labor, for many courtesies and substantial help in the preparation of this work. These services have been freely rendered and have largely consisted in the careful and painstaking reading of the proof of the chapters relating to their respective jurisdictions, in the tender of the useful sets of forms with which these chapters are enriched, and many valuable suggestions as to the presentation of the subject-matter of the work.

The author likewise acknowledges his indebtedness to the Department of Commerce and Labor for the use he has been able to make of the material assembled by the department in its fourth special report written and edited by the scholarly John Graham Brooks. He is under similar obligations to R. J. Cary for his Brief on the Power of Congress in Respect to Industrial Insurance, and to the writings of Charles R. Henderson on Industrial Insurance.

Space will not permit the citation of a complete bibliography of sources of information. Aside from the footnotes a fairly comprehensive bibliography will be found in the 24th Annual Report of the Department of Commerce and Labor and in Frankel and Dawson's book on Industrial Insurance in Europe.

The subject of Workmen's Compensation and Insurance has largely engrossed the attention of the author for some twenty years, during which time he has spent

two years in Europe where he first familiarized himself with the practical operation of the systems in the countries of their origin. He submits the results of these years of study and labor to students of modern industrial economics and to the bar of this country, which is largely charged with the administration and interpretation of the laws, confident that these pages have vindicated the enactment of these laws, that their scope is better understood and that an adequate administrative procedure—in the light of the present state of the subject—has been developed.

JAMES HARRINGTON BOYD.

Toledo, December 2, 1912.





# TABLE OF CONTENTS

---

## CHAPTER I.

**DISTINCTIONS BETWEEN THE COMMON LAW, EMPLOYER'S LIABILITY LAWS, WORKMEN'S INDUSTRIAL INSURANCE LAWS, AND WORKMEN'S COMPENSATION LAWS AS REMEDIES FOR COMPENSATING WORKMEN INJURED IN THE DUE COURSE OF THEIR EMPLOYMENT.**

**Sec.**

1. The common-law system of employer's liability prior to the employer's liability and workmen's compensation and insurance laws.
2. The system of employer's liability prior to the workmen's insurance and compensation acts.

**Sec.**

3. The distinguishing characteristics of employer's liability laws.
4. The modern conception of the employer's liability.
5. The distinguishing characteristics of workmen's compensation acts.
6. The distinguishing characteristics of workmen's industrial insurance laws.

## CHAPTER II.

**HISTORICAL SKETCH OF DEVELOPMENT OF WORKMEN'S INDUSTRIAL INSURANCE AND WORKMEN'S COMPENSATION LAWS IN THE UNITED STATES.**

**Sec.**

7. Inception of movement for these laws.
8. Previous investigation of the problem.
9. The Chicago conference of employer's liability and workmen's compensation commissions.
10. Subjects discussed.

**Sec.**

11. Conclusions of the Chicago conference.
12. The work of the State commissions.
13. Executive recommendations.
14. The Federal employer's liability and workmen's compensation commission.

## CHAPTER III.

## BRIEF HISTORICAL REVIEW OF THE GERMAN PLAN OF INSURANCE OF WORKMEN AGAINST ACCIDENTS, THE BRITISH COMPENSATION ACT, AND THE OPERATION OF THE SYSTEMS OF EMPLOYERS' LIABILITY IN GREAT BRITAIN AND THE UNITED STATES.

- |   |   |
|---|---|
| Sec.  | Sec.  |
| 15. Chronological development of the subject.   | 18. British compensation legislation.                     |
| 16. The insurance message of Emperor William I. | 19. Some characteristics of German insurance legislation. |
| 17. German industrial insurance acts.           |   |

## CHAPTER IV.

## THE ORIGIN AND DEVELOPMENT OF COMPULSORY INDUSTRIAL INSURANCE FOR WORKMEN IN THE GERMAN STATES-SICK INSURANCE, ACCIDENT INSURANCE, AND INVALIDITY AND OLD-AGE PENSIONS.

- |   |   |
|---|---|
| Sec.  | Sec.  |
| 20. Conditions in Germany which induced consideration of the subject. | 27. Basis of compulsory insurance.                                    |
| 21. Influence of Fichte and Hegel.                                    | 28. German system described.  |
| 22. Views of Sismondi.  | 29. The relation of the German industrial insurance law to Socialism. |
| 23. Views of Winkelblech.   | 30. Development of the insurance idea from the early guilds.          |
| 24. Views of Schaeffle, father of compulsory state insurance.         | 31. Miners' societies (Knappschaftskassen).                           |
| 25. Views of Wagner.  | 32. Ethical basis of system.  |
| 26. State insurance a matter of German origin.                        |   |

## CHAPTER V.

## THE ECONOMIC BASIS OF COMPULSORY INDUSTRIAL INSURANCE AND COMPENSATION LAWS FOR INJURED WORKMEN.

- |  |   |
|--|---|
| Sec.   | Sec.  |
| 33. Statement of problem from the economic standpoint.                             | 35. Statistical experience under compulsory state insurance in Germany. |
| 34. Statistical studies exhibiting effects of old and new systems of compensation. |   |



Sec.	Sec.
36. The question of fault and prevention of accidents—compensation—German statistics.	46. German statistics analyzed.
37. Experience in New York.	47. Classification of causes of accidents in Germany.
38. The Pittsburgh survey.	48. Miscellaneous data.
39. The Wisconsin bureau of statistics.	49. Statistical results of the per cent. of workmen who receive compensation under the common law and liability laws.
40. The report of the Illinois commission.	50. Fundamental economic conclusions.
41. Ohio statistics.	51. Remedies proposed—German and English plans.
42. Average amount received in settlement in Ohio under old system.	52. Specific provision against the economic insecurity of workmen in the United States.
43. Attorney fees under old system in Ohio.	53. Argument for joint contribution by employer and employé.
44. Social and economic results of accidents.	
45. Liability insurance statistics in Ohio.	

## CHAPTER VI.

## THE NEW YORK WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
54. New York law first construed.	58. Argument for constitutionality of act.
55. Nature and scope of the New York act.	59. Reasons for upholding view of court.
56. Text of the New York statute—Labor Law art. 14a.	59a. New York General Liability Law with compensation features.
57. Construction of the law by the court of appeals.	

## CHAPTER VII.

## THE MONTANA WORKMEN'S INSURANCE ACT.

Sec.	Sec.
60. Its nature and construction by the Supreme Court.	62. The constitutionality of the act.
61. Questions presented to the court.	63. The effect of the decision.
	64. Text of the Montana Insurance Act.

## CHAPTER VIII.

AN ANALYSIS OF THE PRINCIPLES OF THE LEGAL BASIS  
OF COMPULSORY INSURANCE AND COMPENSATION LAWS.

- |   |  |
|---|--|
| <p>Sec.</p> <p>65. Introductory.</p> <p>66. The nature and remedial provisions of insurance laws.</p> <p>67. Nature of the obligation imposed.</p> <p>68. Nature of the obligation imposed—German view.</p> <p>69. The relationship between employer and employé under common-law and liability acts.</p> <p>70. The relationship between employer and employé under insurance and compensation acts.</p> <p>71. Validity as to employer—Deprivation of defenses.</p> <p>72. Validity as to employé.</p> <p>73. Validity as to employé—Vested rights in remedies withdrawn.</p> <p>74. Validity as to the State—Public interest.</p> <p>75. The problem of industrial insurance.</p> <p>76. Whether these laws infringe constitutional limitations.</p> <p>77. Insurance acts sustainable against constitutional objections under analogous decisions.</p> <p>78. Analogous decisions—Application to insurance acts.</p> <p>79. Analogous decisions—Bank depositors' guarantee acts.</p> <p>80. Analogous decisions—Sheep-dog fund cases.</p> <p>81. Analogous decisions—Whisky cure cases.</p> <p>82. Analogous decisions—Farmer's fund cases.</p> | <p>Sec.</p> <p>83. These laws an exercise of taxing power—Attributes and limitations of taxing power.</p> <p>84. Subjects of taxation.</p> <p>85. Similarity of attributes of general taxation and eminent domain.</p> <p>86. Necessity that purpose of tax be a public purpose.</p> <p>87. The public purpose for which taxes may be levied.</p> <p>88. Public purpose determined by Legislature.</p> <p>89. Necessity of benefit as condition to right to tax.</p> <p>90. Necessity of return of benefit to one paying to special fund.</p> <p>91. Whether conditions of equality and uniformity are satisfied in insurance and compensation acts.</p> <p>92. Whether contract clauses of constitutions are violated—Uniform operation of laws.</p> <p>93. Insurance and compensation laws a proper exercise of police powers.</p> <p>94. Whether laws open to objection of lack of uniformity of operation and equality of protection—Classification.</p> <p>95. Legislature in its enactments limited only by State Federal constitutions.</p> <p>96. Nature of administration of compensation acts.</p> |
|---|--|

Sec.	Sec.
97. Nature of administration of compensation acts whether executive or judicial—Due process.	98. Deprivation of right to trial by jury.
	99. Whether act may be optional.

## CHAPTER IX.

## SUMMARY OF FOREIGN COMPENSATION LAWS.

Sec.	Sec.
100. Outline of foreign workmen's compensation laws.	113. Luxemburg schedule.
101. Austrian schedule.	114. Netherlands schedule.
102. Belgian schedule.	115. New Zealand schedule.
103. British Columbia schedule.	116. Norwegian schedule of compensation and scope of act.
104. Cape of Good Hope schedule.	117. Queensland schedule of compensation and scope of act.
105. Denmark schedule.	118. Russian schedule.
106. Finland schedule.	119. South Australian schedule.
107. French schedule.	120. Swedish schedule.
108. German schedule of compensation and scope of act.	121. Spanish schedule.
109. Great Britain schedule.	122. West Australia schedule of compensation and scope of act.
110. Greek schedule of compensation and scope of act.	
111. Hungarian schedule.	
112. Italian schedule.	

## CHAPTER X.

## THE WASHINGTON WORKMEN'S INSURANCE ACT.

Sec.	Sec.
123. The nature and scope of the Washington industrial insurance act.	131. Form of general directions to employes to be posted on all floors of plant.
124. The workmen's insurance act with its construction by the board.	132. Formal procedure—List of forms.
125. Proposed amendment.	133. Form of report of actual payroll. (a)
126. Constitutionality of the act.	134. Form of contractor's statement of wages. (b)
127. Opinion of the court.	135. Form of monthly statement of city. (c)
128. Rules and directions.	136. Form of notice of assessment. (d)
129. Rules and directions for employers.	
130. Rules and directions for workmen.	

Sec.	Sec.
137. Form of elective adoption of the provisions of act. (e)	154. Form of affidavit of claimant for compensation—Survivors of deceased workmen. (t)
138. Form of demand for first quarterly payment required by act. (f)	155. Form of summary and award. (u)
139. Form of monthly statement. (g)	156. Form of partial payment voucher—Permanent partial disability—Full payment—Total temporary disability—Partial payment. (v)
140. Alphabetical list of industries with rates and classification. (h)	157. Form of partial payment voucher—Total temporary disability—Monthly allowance. (vv)
141. Form of instructions to cities, counties, school, port, waterway, drainage, or other municipal corporation. (i)	158. Form of pension voucher—Permanent total disability. (w)
142. Form of letter of instructions to the employers and employés. (j)	159. Form of pension voucher—Survivors of deceased workman. (ww)
143. Form of employer's report of accident to employé with chart. (k)	160. Form of burial expense voucher—Account of deceased workman. (x)
144. Workmen's claim for compensation. (l)	161. Form of final settlement voucher. (y)
145. Form of instructions to injured workman. (l)	162. Form of election to receive compensation and assignment of claim—Injuries by defaulting employer. (z)
146. Form of report of attending physician with charts. (m)	163. Election to receive compensation and assignment of claim—Injury by other than employer. (zz)
147. Form of surgical discharge report. (n)	164. Statistical reports on the operation of the act.
148. Form of report of witnesses. (o)	165. Review of the first eight months' operation of act.
149. Surgeon's special report with charts. (p)	166. Official state safety bulletin.
150. Form of proof of death by physician. (q)	
151. Form of proof of death by undertaker. (r)	
152. Form of dependent's claim for compensation. (s)	
153. Affidavit to foregoing form.	

## CHAPTER XI.

## THE OHIO WORKMEN'S INSURANCE ACT.

- |   |  |
|---|--|
| <p>Sec.</p> <p>167. The nature of the Ohio Workmen's Insurance act.</p> <p>168. Ohio act an insurance act.</p> <p>169. Ohio act an indirectly compulsory act.</p> <p>170. Employer's liability under the act.</p> <p>171. The statute and its interpretation by the board and the attorney-general.</p> <p>172. The decision of the Supreme Court of Ohio sustaining the law.</p> <p>173. Workshop and factory inspection and regulation act.</p> <p>174. Rules of procedure before the state liability board of awards.</p> <p>175. Procedure as to employers.</p> <p>176. Forms of applications and notices to be used by employers covered by the act.</p> <p>177. Form of application for classification of industry and for premium.</p> <p>178. Form of supplementary report—Accident experience.</p> <p>179. Form of notice of employer to employés.</p> <p>180. A comparison of premium rates under the Ohio law with liability insurance rates under compensation laws.</p> <p>181. Procedure as to injured employés.</p> <p>182. Form of procedure on notices in general.</p> <p>183. Form of first notice of injury. (a)</p> | <p>Sec.</p> <p>184. Form of first notice of death. (b)</p> <p>185. Formal procedure for procuring medical, nurse, and hospital services and medicines, without compensation.</p> <p>186. Form of application for money to pay for medical, nurse and hospital services and medicines, without compensation. (a)</p> <p>187. Form of physician's fee bill. (b)</p> <p>188. Form of druggist's cost bill. (c)</p> <p>189. Form of employer's certificate and oath. (d)</p> <p>190. Form of certificate and oath of lay witness. (e)</p> <p>191. Formal procedure to obtain money to pay for medical, nurse and hospital services and medicines, with compensation.</p> <p>192. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)</p> <p>193. Form of employer's certificate and oath. (b)</p> <p>194. Form of physician's fee bill. (c)</p> <p>195. Form of druggist's cost bill. (d)</p> <p>196. Form of medical fee bill and hospital charges. (e)</p> <p>197. Form of certificate and oath of lay witness. (f)</p> <p>198. Formal procedure to obtain compensation in case of permanent total disability.</p> |
|---|--|

Sec.	Sec.
199. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)	212. Form of druggist's cost bill. (g)
200. Form of employer's certificate and oath. (b)	213. Form of medical fee bill and hospital charges. (h)
201. Form of physician's fee bill. (c)	214. Form of certificate and oath of lay witness. (i)
202. Form of druggist's cost bill. (d)	215. Form of procedure to obtain compensation and money to pay for medical, hospital and funeral expenses.
203. Form of medical fee bill and hospital charges. (e)	216. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses. (a)
204. Form of certificate and oath of lay witness. (f)	217. Form of proof of dependents. (b)
205. Forms to obtain money to pay for medical, hospital and funeral expenses only.	218. Form of undertaker's certificate of death and cost bill. (c)
206. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses, without award. (a)	219. Form of lay witness's certificate in proof of death. (d)
207. Form of undertaker's certificate of death and cost bill. (b)	220. Form of physician's certificate in proof of death. (e)
208. Form of lay witness's certificate in proof of death. (c)	221. Form of employer's certificate and oath. (f)
209. Form of physician's certificate in proof of death. (d)	222. Form of physician's fee bill. (g)
210. Form of employer's certificate and oath. (e)	223. Form of druggist's cost bill. (h)
211. Form of physician's fee bill. (f)	224. Form of medical fee bill and hospital charges. (i)
	225. Form of certificate and oath of lay witness. (j)

## CHAPTER XII.

### THE WISCONSIN WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
226. Nature and scope of Wisconsin act.	228. The opinion of the Supreme Court of Wisconsin sustaining constitutionality of act.
227. Text of Wisconsin workmen's compensation act with construction of its provisions.	

Sec.	Sec.
229. Decisions of commission— Construction of word "employment."	election to become subject to provisions of act. (c)
230. Decisions of commission— Powers of commission— Review of awards—Construction of word "employment."	241. Form of notice by employer to the commission of compliance with the law. (d)
231. Decisions of commission— Construction of "wilful misconduct."	242. Form of first report of accident. (e)
232. Decisions of commission— Construction of word "support."	243. Form of supplementary reports on accident. (f)
233. Decisions of commission— Construction of "casual employment" and time of serving "notice."	244. Form of answer to application. (g)
234. Decisions of commission— Meaning of "support" "dependents."	245. Form of notice by employé that he elects to be subject to provisions of act. (h)
235. Procedure under the act— Rules of practice.	246. Form of notice of employé upon entering employment that he elects not to be subject to act. (i)
236. Circular letter to employers by the commission in explanation of its rules of practice.	247. Form of notice to employer of claim for injury under act. (j)
237. Formal procedure under Wisconsin act.	248. Form of application for adjustment of claim. (k)
238. Form of employer's written acceptance. (a)	249. Form of accident report of casualty company. (l)
239. Form of employer's notice of withdrawal from operation of act. (b)	250. Form of notice of hearing. (m)
240. Form of notice that employer has filed notice of	251. Form of subpoena. (n)
	252. Form of admission of service. (o)
	253. Form of notice of the entry of findings and award made by commission. (p)

## CHAPTER XIII.

## NEW JERSEY COMPENSATION ACT.

Sec.	Sec.
254. Nature and scope of act.	257. Text of act creating the employer's liability commission.
255. Text of New Jersey workmen's compensation act.	
256. Text of supplementary act saving existing contracts.	

Sec.	Sec.
258. Text of act requiring reports of industrial accidents to be made to the Department of Labor.	260. Form of accident blank for report by employer.
259. Construction of act and procedure thereunder.	261. Form of report by insurance company to commissioner of Labor on accident and compensation paid.

## CHAPTER XIV.

### THE CALIFORNIA WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
262. The nature and scope of the act.	275. Form of notice to employer of claim for compensation for injury under act. (g)
263. The California act and its construction by the board.	276. Forms for hearings before board.
264. Reports of industrial accidents.	277. Form of notice of filing of application for adjustment of claim. (h)
265. Rules of practice of the industrial accident board of California.	278. Form of notice of hearing of application for adjustment of claim. (i)
266. The formal procedure under the act.	279. Form of subpoena for witness to appear before industrial accident board. (j)
267. Forms to be used by employers.	280. Forms to be used by physicians.
268. Form of employer's written acceptance of the provisions of the act. (a)	281. Form of physician's report of accident to employé. (k)
269. Form of employer's withdrawal of acceptance of provisions of the act. (b)	282. Form of request for report of accident. (l)
270. Form of notice that employer has accepted the compensation provisions of the act. (c)	283. Form of request for fuller report of accident. (m)
271. Form of employer's first report of accident to employé. (d)	284. Form of notice to doctor to file report. (n)
272. Form of employer's supplemental report of accident to employé. (e)	285. Forms to be used by casualty companies.
273. Forms for employés.	286. Form of first accident report of casualty company. (o)
274. Form of notice by employé of election not to be subject to the provisions of the act. (f)	287. Form of supplemental accident report of casualty company. (p)



## CHAPTER XV.

## THE NEVADA WORKMEN'S COMPENSATION ACT.

Sec.		Sec.	
288.	Nature and scope of the act.	290.	Text of the Nevada Workmen's compensation law.
289.	Procedure—Boards of arbitration.		

## CHAPTER XVI.

## THE KANSAS WORKMEN'S COMPENSATION ACT.

Sec.		Sec.	
291.	Nature and scope of the act.	293.	Formal procedure under the act.
292.	Text of the Kansas compensation act.	294.	Form of election of employer to come within the provisions of the act.

## CHAPTER XVII.

## THE NEW HAMPSHIRE WORKMEN'S COMPENSATION ACT.

Sec.		Sec.	
295.	The nature and scope of the act.	299.	Form of declaration of employer. (a)
296.	Text of the New Hampshire compensation act.	300.	Form of report of industrial accident to bureau of labor. (b)
297.	Administration of the New Hampshire workmen's compensation act.	301.	Form of supplemental report of industrial accident to bureau of labor. (c)
298.	Formal procedure—List of forms.		

## CHAPTER XVIII.

## THE MASSACHUSETTS WORKMEN'S COMPENSATION ACT.

Sec.		Sec.	
302.	Nature and scope of the Massachusetts workmen's compensation act.		liability insurance, so-called.
303.	Text of the Massachusetts compensation act.	305.	Text of an act relative to the insurance of compensation to employes for personal injuries received in the course of their employment.
304.	Text of an act to authorize certain mutual insurance companies to transact the business of employers'		

Sec.	Sec.
306. Text of an act to authorize certain advances from the treasury of the commonwealth to the Massachusetts employés' insurance association.	jured employé has refused to submit himself to an examination. (f)
307. Opinion of the supreme judicial court sustaining constitutionality of compensation act.	316. Form of notice to employé from industrial accident board relative to his refusal to submit himself to an examination. (g)
308. Rules of Industrial Accident Board.	317. Form of agreement in regard to compensation. (h)
309. Formal procedure—List of forms.	318. Form of claim for compensation for injury. (i)
310. Form of notice to employés. (a)	319. Form of notice of injury. (j)
311. Form of notice of claim of common-law rights. (b)	320. Form of report of committee on arbitration. (k)
312. Form of notice of waiver or rights under common law previously claimed. (c)	321. Form of application for review of claim before full board. (l)
313. Form of agreement for redeeming liability by payment of lump sum. (d)	322. Form of notice assessing cost of proceedings before arbitration committee upon party prosecuting or defending same without reasonable grounds. (m)
314. Form of notice that an employer has ceased to be a subscriber. (e)	323. Form of receipt on account of compensation. (n)
315. Form of notice to industrial accident board that an in-	324. Form of settlement receipt. (o)

## CHAPTER XIX.

### THE ILLINOIS WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
325. Nature and scope of the act.	persons having an interest under the act and the commissioners of the state bureau of labor statistics.
326. Text of Illinois Workmen's Compensation law.	
327. Administration and procedure under the act.	329. Form of employer's notice to the state bureau of his election not to accept the act. (a)
328. List of forms to be used by employers, employés and	

Sec.	Sec.
330. Form of employer's notice to the state bureau of his intention to discontinue compensation payments. (b)	341. Form of report to be made by medical and surgical examiners as to the nature, extent and probable duration of employé's injury. (m)
331. Form of employer's notice to his employés of his intention to discontinue compensation payments (c).	342. Form of employé's petition for lump sum payment in lieu of installment payments. (n)
332. Form of notice given by employé of his refusal to accept the act. (d)	343. Form of employé's petition for a lump sum payment where there is complete disability and where compensation has been at the specified rate for at least six months. (o)
333. Form of statement of compensation provisions of the act, to be furnished to the employé personally or posted in the establishment. (e)	344. Form of petition by employé's administrator for lump sum payment. (p)
334. Form of employé's notice of injury and claim for compensation. (f)	345. Form of employer's petition that he be permitted to make a lump sum payment, instead of installment payments. (q)
335. Form of notice to employer of accident causing employé's death. (g)	346. Form of employer's petition for the appointment of a guardian, conservator or administrator. (r)
336. Form of notice of intention to file a petition asking for the payment of a lump sum by way of compensation. (h)	347. Form of employé's petition for the appointment of a third arbitrator. (s)
337. Form of report of fatal accident, to be filed with the state bureau. (i)	348. Form of report of board of arbitrators. (t)
338. Form of supplemental report of fatal accident, to be filed when the basis for final settlement is determined. (j)	349. Form of petition appealing from award made by board of arbitrators. (u)
339. Form of report of non-fatal accident, to be submitted to the state bureau. (k)	350. Form of bond to be filed upon an appeal from an award made by board of arbitrators. (v)
340. Form of supplemental report of non-fatal accident, to be forwarded to the state bureau when the injured person has recovered. (l)	351. Form of demand for a jury upon an appeal from an award made by board of arbitrators. (w)

Sec.	Sec.
352. Form of petition for the appointment of a third medical practitioner or surgeon for the purpose of de-	termining the nature of the employé's injury. (x)
	353. Form of petition for the review of an agreement or award. (y)

## CHAPTER XX.

## THE MICHIGAN WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
354. Nature and scope of act.	361. Form of notice of employé upon entering employment that he elects not to be subject to act. (c)
355. Text of the Michigan Workmen's Compensation act.	362. Form of notice by employé that he elects to be subject to provisions of act. (d)
356. Letter of instructions to employers.	363. Form of notice to employer of claim for injury. (e)
357. Form of employer's notice to employés that he accepts provisions of act.	364. Form of first report of accident by employer. (f)
358. Formal procedure—List of forms.	365. Form of supplementary report of accident by employer. (g)
359. Form of employer's written acceptance. (a)	
360. Form of employer's notice of withdrawal from operation of acts. (b)	

## CHAPTER XXI.

## THE RHODE ISLAND WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
366. Nature and scope of act.	372. Form of notice by parent or guardian of employé of claim at common law. (c)
367. Text of the Rhode Island Compensation Act.	373. Procedure in the superior court under act.
368. Administration and procedure.	374. Form of agreement of final adjustment. (d)
369. Formal procedure under act.	374a. Form of agreement where payments continue. (e)
370. Form of notice by employer of acceptance of provisions of act. (a)	374b. Form of petition by any person entitled to file under act. (f)
371. Form of notice by employé of claim of right of action at common law. (b)	

## CHAPTER XXII.

## THE ARIZONA COMPENSATION ACT.

Sec.	Sec.
375. The nature and scope of act.	375a. Text of act.

## CHAPTER XXIII.

## THE MARYLAND COMPENSATION ACT.

Sec.	Sec.
376. Nature and scope of act.	376b. Formal procedure.
376a. Text of Maryland act.	

## CHAPTER XXIV.

## FEDERAL COMPENSATION ACTS FOR ARTISANS AND LABORERS INJURED IN THE SERVICE OF THE GOVERNMENT.

Sec.	Sec.
377. Nature and scope of act.	391. Form of request for medical examination to secure continuance of compensation beyond six months.
378. Text of act of 1908.	
379. Text of act of 1911.	
380. Text of act of 1912.	
381. Rules and regulations.	
382. Formal procedure under the Federal acts.	392. Form of report of discontinuance of compensation payments.
383. Form of notice of right to compensation.	393. Procedure in case of death.
384. Forms of filing claims.	394. Form of claim for compensation on account of death.
385. Procedure in case of disability.	395. Form of notice of right to compensation.
386. Form of immediate report of injury.	396. Construction of the Federal acts.
387. Form of report of termination of disability.	397. "Injury" and "accident" defined.
388. Form of report of death from injury.	398. "Injury" and "Disease without injury"—Disease contracted in the course of employment.
389. Form of claim for compensation on account of injury.	399. "In the course of such employment" defined.
390. Form of certificate of disability.	

## CHAPTER XXV.

## MATTERS COMMON TO THE VARIOUS AMERICAN STATUTES.

Sec.	Sec.
400. Introduction.	415. Compensation for total disability.
401. Defenses which are abolished where the employer does not accept the provisions of the Compensation Act.	416. Compensation paid on account of partial disability.
402. Various schemes of administration.	417. Medical and surgical aid.
403. The employments covered by the Acts.	418. Who are employés.
404. Who are "employers".	419. The manner in which compensation is paid.
405. Liability of principal—Subrogation.	420. Commutation of awards and claims.
406. The employés covered by the acts.	421. Serious, or intentional and wilful misconduct—Intoxication and drunkenness.
407. Notice required by employer, employé and state official.	422. Election of remedies.
408. Injuries covered by the several acts.	423. Alternative schemes of compensation permitted.
409. Report of accident by employer.	424. Physical examination.
410. Notice of injuries by employé.	425. Appeals.
411. Report of accident and injuries.	426. Preference of claims for compensation.
412. Compensation provided by the acts in the event of death and funeral expenses.	427. Assignability and transference of rights of compensation under the acts.
413. Who are dependents.	428. Exemption of employers from provisions of act by contracts.
414. When compensation begins in case of disability.	429. Penalties for refusing to comply with provisions of the acts.
	430. Attorney's fees.
	431. Expenses of administration of acts.

## CHAPTER XXVI.

## WHO ARE WORKMEN WITHIN MEANING OF STATUTE.

Sec.	Sec.
432. Meaning of term "workman."	435. Work on shares—Taxicab drivers.
433. Partners.	436. Employment in agriculture.
434. Work on shares.	

Sec.	Sec.
437. Employment by charity organizations for the unemployed.	441. Employés temporarily lent or hired.
438. Professional ballplayer a workman.	442. Concurrent contracts of service.
439. Term "workman" does not include policeman.	443. Effect of unauthorized employment of servant.
440. Casual employment.	444. Independent contractors.
	445. Members of employer's family.

## CHAPTER XXVII.

## INJURIES FOR WHICH COMPENSATION ALLOWED.

Sec.	Sec.
446. Meaning of term "accident".	461. Occupational diseases—Apportionment between different employers.
447. Inference that injury a result of accident.	462. Injuries from violence at the hands of a third person.
448. Refusal to undergo a surgical operation.	463. Acceleration of existing disease by accident.
449. Injury from elements—Heat, cold and lightning.	464. Defective medical treatment.
450. Death from anaesthetic administered in operation.	465. Extraterritorial effect of compensation laws.
451. Nervous shocks.	466. Whether injury must be natural or proximate cause of accident.
452. Incapacity through nervousness—Simulation.	467. Wilful misconduct.
453. Poisoning.	468. Wilful misconduct—Intoxication.
454. Apoplexy as an accident.	469. Wilful misconduct—Misrepresentation as to age.
455. Injuries from inhalation of gases.	470. Dismissal of incapacitated person for his own misconduct.
456. Injuries to sight.	471. Suicide while insane.
457. Heart injuries.	
458. Strains and ruptures.	
459. Gradual paralysis.	
460. Injury while undergoing epileptic fit.	

## CHAPTER XXVIII.

## WHETHER SERVANT WAS IN THE COURSE OF HIS EMPLOYMENT AT THE TIME INJURIES WERE RECEIVED.

Sec.	Sec.
472. Meaning of expression "accident arising out of and in the course of the employment."	473. Injury to employé on way to or from pay office.
	474. Acts outside line of employment.

Sec.	Sec.
475. Injury while doing forbidden acts.	488. Collector injured in course of employment.
476. Practical jokes.	489. Sailors and others leaving and returning to ship—Cases where accidents arise out of and in the course of employment.
477. Injury to an employé away from the master's premises.	490. Sailors and others leaving and returning to ship—Cases where accident did not arise out of and in the course of employment.
478. Tetanus contracted by gardener.	491. Injuries received on premises after discharge of servant.
479. Dismissed employé on premises to remove his tools.	492. Whether work "on, in or about" a railway.
480. Temporary interruptions.	493. Malicious injuries are not received in course of employment.
481. Injury during lunch hour.	494. Retroactive effect of statutes.
482. Fall from wagon while attempting to recover personalty dropped by employé.	495. Burden of proof that accident arose out of and in the course of employment.
483. Obedience of order which should not be obeyed.	
484. Attempts to save life of fellow employé.	
485. Acts in emergencies.	
486. Going to and returning from work.	
487. Suffocation while asleep on premises of master.	

## CHAPTER XXIX.

## DEPENDENTS OF DECEASED WORKMAN.

Sec.	Sec.
496. Meaning of term "dependent."	505. Mother of injured child dependent though supported by husband.
497. Mother total dependent of one of several sons.	506. Wife separated from husband.
498. Total and partial dependents of same workman.	507. Presumption of death from lapse of time.
499. Parents.	508. Right of representative of deceased dependent.
500. Aliens.	509. Necessity of appointment of administrator of dependent.
501. Paupers.	510. Death of workman under compensation not a bar to claim of dependents.
502. Posthumous children.	
503. Illegitimates.	
504. Where one is the dependent of more than one injured workman.	



## CHAPTER XXX.

LIABILITY OF PRINCIPAL CONTRACTOR—SUBROGATION—  
EXEMPTION CONTRACTS.

- |   |   |
|---|---|
| <p>Sec.<br/>511. Legal relation of employer and workman—When does it exist?</p> | <p>Sec.<br/>512. Liability of principal contractor.<br/>513. Subrogation—Indemnity.<br/>514. Exemption contracts.</p> |
|---|---|

## CHAPTER XXXI.

## AMOUNT OF COMPENSATION.

- |  |  |
|--|--|
| <p>Sec.<br/>515. Right to make claim for compensation is personal.<br/>516. Compromise of claims.<br/>517. Lump sum payment.<br/>518. Right to compensation as dependent on proximate cause of death.<br/>519. Compensation for total incapacity.<br/>520. Loss of sight—As total or permanent disability.<br/>521. Partial incapacity due to clumsiness on recovery.<br/>522. Exaggeration of condition.<br/>523. Disability prolonged by failure to take exercise.<br/>524. Pain and suffering not recompensed.<br/>525. Average weekly earnings.<br/>526. Average weekly earnings—Grade of employment in which injuries received.<br/>527. Average weekly earnings—Breaks in employment.<br/>528. Average weekly earnings—Inclusion of allowances and gratuities.<br/>529. Average weekly earnings—Deduction of sums paid helper.</p> | <p>Sec.<br/>530. Average weekly earnings—Consideration of earnings of others in the same employment.<br/>531. Reduction of compensation by reason of change of circumstances.<br/>532. Reduction of compensation because of ability to do light work.<br/>533. Effect of bona fide efforts to obtain employment.<br/>534. Diminution in earnings of injured employé owing to general fall in wages.<br/>535. Deduction of hospital fees.<br/>536. Deduction of compensation while injured workman in prison.<br/>537. Effect of acceptance of relief funds for injury.<br/>538. Deductions from compensation to dependents.<br/>539. Consideration of profits of business carried on by injured workman.<br/>540. Effect of receiving same or increase in earnings after injury.<br/>541. Probable earnings of infant.</p> |
|--|--|

Sec.	Sec.
542. Injuries after brief employment.	544. Amount of compensation where dependent illegitimate.
543. Death of injured workman while receiving compensation for previous injury.	545. Effect of certificate of termination of incapacity.

## CHAPTER XXXII.

## PROCEDURE UNDER BRITISH ACT.

Sec.	Sec.
546. Election of remedies and estoppel.	558. Burden of proof on application to reduce compensation.
547. Necessity of dispute to give arbitrator jurisdiction.	559. Burden of proof that injury was result of accident.
548. Agreement to pay compensation in lieu of submission to arbitration.	560. Admissibility of declarations of injured workman.
549. Rights of workmen against liability insurance company.	561. Conclusiveness of certificate of medical referee.
550. Recovery of over-payments made by employer.	562. Submission to medical referee.
551. Letters of administration to injured workman on estate of employer.	563. Recovery from injury a question of fact.
552. Guardian ad litem for incompetent dependent.	564. Procedure for apportionment among dependents.
553. Notice of claim for injury.	565. Right to make award to terminate at a fixed date.
554. Necessity of stating amount of claim in notice.	566. Nominal award to keep proceedings alive.
555. Amendment of pleadings.	567. Grant of new trial by arbitrator.
556. Demand of workman that his medical attendant be present at examination.	568. Employer bound by application for review.
557. Demand that medical examination take place in attorney's office.	569. Revision of award on change of circumstances of injured workman.
	570. Appeal.
	571. Costs and fees.

## CHAPTER XXXIII.

## THE BRITISH WORKMEN'S COMPENSATION AND NATIONAL INSURANCE ACT, 1911.

Sec.	Sec.
572. Scope and nature of the act.	574. Investment of sums paid on death claims.
573. Construction of the act.	

Sec.	Sec.
575. Actions independent of act.	578. National Insurance Act 1911
576. Notice of accident.	—David Lloyd George In-
577. Text of British compensa-	insurance Act.
tion act of 1906.	

## CHAPTER XXXIV.

THE IMPERIAL INDUSTRIAL INSURANCE LAWS AGAINST  
SICKNESS, ACCIDENTS, INVALIDITY AND OLD AGE  
PRIOR TO LAW OF 1911.

Sec.	Sec.
579. Dr. Zacher's guide to the German law.	589. Agricultural accident insur-
580. Sick insurance.	ance law.
581. Extent of the insurance.	590. The building trades acci-
582. Accident insurance.	dent insurance law.
583. The object of the insurance.	591. The marine accident insur-
584. The waiting period.	ance law.
585. Awarding of the compensa-	592. Principles affecting new in-
tions.	insurance of small enter-
586. Payments.	prises.
587. Prevention of accidents.	593. Invalidity and old-age in-
588. Personal liability of the	insurance.
employer in relation to	594. Conclusion.
the obligatory Industrial	
Insurance Law.	

## CHAPTER XXXV.

## THE GERMAN WORKMEN'S INSURANCE CODE OF JULY 19, 1911.

Sec.	Sec.
595. Introduction.	599. Invalidity and survivors
596. General features.	insurance.
597. Sickness insurance.	600. Analysis of the code and
598. Accident insurance.	the introductory law.

## CHAPTER XXXVI.

## TEXT OF GERMAN CODE OF 1911.

Sec.
601. The act.



# THE LAW OF COMPENSATION AND INSURANCE FOR INJURIES TO WORKMEN

---

## CHAPTER I.

DISTINCTIONS BETWEEN THE COMMON LAW, EMPLOYER'S LIABILITY LAWS, WORKMEN'S INDUSTRIAL INSURANCE LAWS, AND WORKMEN'S COMPENSATION LAWS AS REMEDIES FOR COMPENSATING WORKMEN INJURED IN THE DUE COURSE OF THEIR EMPLOYMENT.

Sec.

1. The common law system of employer's liability prior to the employer's liability and workmen's compensation and insurance laws.
2. The system of employer's liability prior to the workmen's insurance and compensation acts.

Sec.

3. The distinguishing characteristics of employer's liability laws.
4. The modern conception of the employer's liability.
5. The distinguishing characteristics of workmen's compensation acts.
6. The distinguishing characteristics of workmen's industrial insurance laws.

§ 1. The common law system of employer's liability, prior to the liability, and compensation and insurance laws.—Today, at common law, the employer's duty to his employé is to use ordinary and reasonable care for the safety of his employé while he is performing his work. That duty includes:

- (a) The duty to provide a reasonably safe place to work.

- (b) The duty to provide reasonably safe tools and appliances.
- (c) The duty of being reasonably careful in hiring agents and servants fit for work they are to do.
- (d) The duty of providing suitable and reasonable rules for carrying on the work.
- (e) The duty to warn and instruct youthful and inexperienced servants as to the dangers of the employment.

If a workman be injured by reason of the failure of these duties he may recover from his employer full compensation for his injuries, the amount of damages to be determined by a jury in the usual legal proceedings. Such a right of action is based upon the negligence or fault of the employer. This is the fundamental principle of the present common-law system brought down from the common law of England and which no statute of States or the Federal Government had changed up to the time of the enactment of compensation acts.

The employer has, however, certain defenses to any action brought at common law, as it now exists, by an employé who has been injured in the due course of his employment, and which constitute a special body of so-called judge made law.

#### (1) THE DEFENSE OF CONTRIBUTORY NEGLIGENCE.

Contributory negligence is the negligence of a servant which is a contributing and proximate cause of his injury, and the burden is generally upon the employé in any action for compensation for injuries received to prove not only the negligence of the employer, but that he himself was exercising ordinary care and was free from negligence, directly contributing to the injury.<sup>1</sup>

<sup>1</sup> The reasons for this rule are thus stated by Judge Thompson: "The rule that contributory negligence bars a recovery is said to be founded on (1) the mutuality of the wrong; (2) the impolicy

The employé injured by his employer's neglect is therefore placed in the same position as a stranger so injured.

## (2) THE FELLOW SERVANT RULE.

The fellow servant rule, as announced in the earlier decisions of our Supreme Courts, precludes the recovery by one servant for any injury occasioned by the negligence of another engaged in the same general business, if there had been ordinary care and diligence observed by the master in the selection of servants.<sup>2</sup>

This fellow servant rule is a special rule which applies only to the status of employment and has its origin in a decision by Lord Abinger in the Court of Exchequer in 1837, in the case of *Priestly v. Fowler* (3 M. & W. 1), and finally settled in England by the House of Lords in 1858 in *Barstonhill Coal Co. v. Reid* (3 Macq. House of Lords Cases, 266). It was followed in all of the states of the union up to the time of the enactment of employers' liability laws.<sup>3</sup>

The *Priestly* case, decided by Lord Abinger, was not a case of injury in a hazardous employment such as a factory or a railroad, but a simple case where a butcher's helper was injured by a wagon driver hired by the same employer. The judge regarded it a hardship to hold the butcher liable for the injury which had no real relation to any fault of the butcher, because the helper could have guarded against the injury as well as the butcher. This hardship appealed to Lord Abinger and he decided in favor of the butcher.

Lord Abinger's opinion reads as follows: "It is ad-  
of allowing a party to recover for his own wrong; (3) the policy of making personal interests of parties depend on their own prudence and care." 1 *Thomp. Neg.* (2d ed.), § 168.

<sup>2</sup> *Columbus, C. & I. C. R. Co. v. Troesch*, 68 III. 545.

<sup>3</sup> See also the case of *Murray v. South Carolina Ry. Co.*, *McMullan's Law*, (S. Car.) 385, where the question was raised in South Carolina in 1837 and decided against the employé.

mitted that there is no precedent for the present action by a servant against a master. We are, therefore, to decide the question upon general principles, and in doing so we are at liberty to look at the consequences of a decision the one way or the other.

"If the master be liable to the servant in this action the principle of that liability will be found to carry up to an alarming extent. He who is responsible by his general duty, or by the terms of his contract for all the consequences of negligence in a matter in which he is the principal, is responsible for the negligence of all his inferior agents. If the owner of the carriage is therefore responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his coachmaker, or his harnessmaker or his coachman. The footman, therefore, who rides behind the carriage, may have an action against his master for a defect in the carriage, owing to the negligence of the coachmaker or for a defect in the harness, arising from negligence of the harnessmaker, or for drunkenness, neglect or want of skill in the coachman; nor is there any reason why that principle should not, if applicable in this class of events, extend to many others. The master, for example, would be liable to the servant for the negligence of the chambermaid, for putting him into a damp bed; for that of the upholsterer for sending him a crazy bedstead; whereby he was made to fall down while asleep and injured himself; for the negligence of the cook in not properly cleaning the copper vessels used in the kitchen; of the butcher, in supplying the family with meat of a quality injurious to the health; of a builder for a defect in the foundation of the house, whereby it fell and injured both the master and the servant by the ruins.

"The inconvenience, not to say the absurdity, of these consequences affords sufficient argument against the application of this principle to the present case. But, in truth, the mere relation of the master and the servant



never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is no doubt bound to provide for the safety of his servant, in the course of his employment, to the best of his judgment, information and belief. The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the cases in which danger may be incurred, if not all, he is just as likely to be acquainted with the probability and extent of it as the master.”<sup>4</sup>

### 3. THE DEFENSE OF ASSUMPTION OF RISK.

The so-called “assumption of risk rule” is closely related to the fellow servant rule, the former rule really embracing the latter. Under this principle every risk which an employment involves after a master has done everything that he is bound to do for the purpose of securing the safety of his servants (including the employment of other servants) is assumed, as a matter of law, by each of those servants. The risks which are thus considered to have been assumed, are those which are commonly described as “ordinary.” It is the settled doctrine of the law that the servant may reasonably be presumed to foresee that he will be exposed to the ordinary risks of the business in which he engages, although it may involve unusual or extraordinary hazards.

The courts are wont to say that there is an “assumption of the risk,” or an “implied contract,” however, in the average case and that is merely a formula of words which the rule of the law happens to take. Even in dangerous employments there is usually no contract between the employer and the workman concerning the

<sup>4</sup> Priestley v. Fowler, 3 M. & W. 1.

risk. Hazard of an employment does not fix the price of wages, they are fixed by competition.

The common law system of employers' liability has been developed along the same lines in the United States and Great Britain, during the period in which modern manufacturing with its factory system was replacing hand labor. It has been well said that "the development has been profoundly influenced by the belief of the courts that the necessity of profit in industrial enterprises demanded protection even at the expense of damage to certain industries."<sup>4a</sup>

**§ 2. The system of employer's liability prior to the insurance and compensation acts.**—The system of liability of employers in the States of the United States and the United States, speaking generally, is founded upon fault. That is, an employé who is injured while employed can only recover damages from his employer when the jury finds that the employer was negligent and that his negligence caused the accident. Even then the employé may not recover in case he was negligent and his negligence contributed to the cause of the injury, or the negligence of a fellow workman caused the injury, or he assumed that risk while working.

For injury due to the inherent hazards of the employment and accidents due to an act of God or for which the blame can not be fixed, the employer is not liable.

These fundamental principles of the common law were accepted and enforced by all the courts of this country until the enactment of Workmen's Insurance and Compensation Laws by Montana, New York, Washington, Ohio, Wisconsin, Massachusetts, New Jersey,

<sup>4a</sup> See Report of the Employer's Liability Commission of Ohio, Part I, p. XVIII.

Illinois, Kansas, California, Michigan, Nevada, New Hampshire, Rhode Island, Maryland, Arizona and the Federal Government.

Prior to the enactment of Workmen's Insurance and Compensation Acts, the legal relation of the employer and his employés in the States and the United States were governed by the common law as modified by statutory liability laws.

Although there have been enacted,—chiefly during the last ten years,—Employer's Liability Laws by the United States and many of the States, they have not essentially changed the fundamental principles of the common law in this respect. The legal relation of employer and employé at common law in both England and United States prior to 1837 in no way differed from that of a stranger and there were no special rules respecting employers' liability. If A was injured on account of B's neglect and not by his own fault, B was bound to compensate A whether A was an employé or not. Since 1837 the Courts have made special rules respecting the liability for accidents in employment. The reason which the courts have assigned for this special body of judge made law is that they are exercising their duty in interpreting the contract of employment. It is to be noted that this body of purely judge made law was in process of making for about seventy years before compensation acts of any kind were passed in the States of the United States, or by the Federal government.

**§ 3. The distinguishing characteristics of employer's liability laws.**—It should be noted, that for two hundred and fifty years after the Magna Charta was adopted, it was the law of England that one was liable to those injured by his acts or by the acts of persons or things for which he was responsible whether the cause of the injury was attributable to the fault of the defendant or not. The first suggestion that

freedom from fault might excuse in such a case was made in 1466, but this rule did not become fully settled in England until 1891. In America there were decisions to this effect from 1820 and after, the most important decisions having been made between 1830 and 1850.<sup>5</sup>

In a later chapter on The Economic Basis of Workmen's Insurance and Compensation Acts,<sup>6</sup> it is shown that an injured workman does not on the old idea of fault have a cause of action, in theory, against his employer, in to exceed eighteen per cent of all the cases, taken collectively, and in practice this per cent falls below twelve per cent. Impressed by this hardship upon injured workmen and their dependents, congress and the legislatures of some thirty of the States of the United States have enacted, within the last ten years, a number of employer's liability acts which have largely abrogated the common law defenses, set out in the preceding section.

The following States have by statute abrogated the defense of fellow servant either by general statute or in particular industries (usually railroads): Arkansas, Colorado, Florida, Georgia (since 1855), Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin.<sup>6a</sup> The Colorado statute is the most striking example of this class since it completely eliminates the defense of fellow servant in every employment.<sup>7</sup>

<sup>5</sup> See "The New York Workmen's Compensation Act Decision" by Dean James Parker Hall, in *The Journal of Political Economy*, Vol. XLV, No. 8, October, 1911, p. 698.

<sup>6</sup> Chapter V.

<sup>6a</sup> The best available summary of the laws of the other states appears in the *Bulletin of the United States Bureau of Labor*, No. 74 of January, 1908.

<sup>7</sup> This statute has been upheld as constitutional in *Vindicator, Min. Co. v. Firstbrook*, 36 Colo. 498.

In the following States the defense of fellow servant is modified without being abrogated: California, Mississippi, Maryland, Ohio, Oregon, South Carolina, Utah, Virginia.

In some or all of the States named, modifications of the common law have been adopted along the following lines (by statutes or by decision as to the common law):

(1) Adopting the doctrine of comparative negligence which allows a recovery notwithstanding contributory negligence, provided it is less in degree than the negligence of the master.

(2) Changing the burden of proof of contributory negligence, from the plaintiff to the defendant, which has always been the rule in the Federal Courts and some States.

(3) Taking away the defense of the assumption of risks when the risk assumed was caused by the fault or negligence of the employer.

**§ 4. The modern conception of employer's liability.**—The old methods of manufacture, and even many of the old industries, have become obsolete and have been superseded by rapid, complicated and hazardous methods growing out of improvements directed towards the cheapening of products, and the ancient relation of employer and employé, under which the employé generally worked beneath the eyes of the employer, has ceased to exist.

In modern times the employer has little personally to do with the employé, and necessarily their mutual personal interest is no longer the same.

Notwithstanding the great changes in the character of the employment and in the hazards, there has been for years practically no change in the law governing the relation; so that thoughtful persons are almost unanimously of the opinion that the law now governing em-

ployer and employé, with respect to injuries done to the latter, in hazardous industrial occupations, is unjust to both employer and employé and a source of unfair oppression to the employer and a cause of unmerited hardship to the employé.

Many suggestions have been made as to a remedy, but commissions on Employer's Liability are strongly of the opinion that the industry itself should bear the burden and not the employé. The industry now bears the burden of the wearing out and destruction of machinery necessarily resulting from its use, and civilization now demands that the industry bear also the burden of the wearing out and destruction of the efficiency of the human machines without which the industry could not survive. In bringing this about, radical changes in the law governing employer and employé must be made. When a man's life is lost, or his efficiency decreased through injury in his employment, humanity demands that his dependents in case of his death, and he himself in case of injury, shall be cared for. This care must be given either by the community at large, or by the industry in which he was engaged when injured.

We have not progressed so far in this country that the State will care for everybody except for charity's sake; but as the injured employé must be cared for, and as the ancient legal fiction of assumption of the risk in the dangerous employment of modern industry is unjust to the employé, it seems fitting that some device spreading this burden throughout the whole industry shall be created, and the employer protected from oppression by law suits and prolonged litigation, and the employer relieved from the necessity of seeking redress in the courts for loss of ability to earn a livelihood, of which he has been deprived by accident. Nor is this in any sense charity, but only simple justice.

A change in the law should insure to the employé

quick, practically immediate relief by way of support and medical attendance, coupled with an assurance of future support.

Some objection might be made to imposing this obligation upon the industry, upon the ground that the employé should bear his share of the burden, in view of the fact that such a scheme is practically in the nature of accident insurance; but it seems more feasible to impose the whole burden upon industry because, like all the other losses growing out of depreciation in machinery and in the plant and other expenses, this added charge will be taken care of in the prices obtained by the employer for the products of the industry.<sup>8</sup>

**§ 5. The distinguishing characteristics of workmen's compensation acts.**—During the years 1910, 1911, 1912, there have been passed Workmen's Compensation Acts in eleven states of the United States and by the United States government as follows:

The New York Law enacted in session of 1910 and held unconstitutional March 24, 1911;

The New Jersey Law approved April 4, 1911, and took effect July 4, 1911;

The Wisconsin Law passed session of 1911 and became operative September 1, 1911;

The California Law enacted session of 1911 and became operative September 1, 1911;

The Kansas Law enacted by the session of 1911 and took effect January 1, 1912;

The Illinois Law passed at the session of 1911 and became operative May 1, 1912;

The Michigan Law passed at the session of 1912 and took effect September 1, 1912;

The Arizona Act took effect September 1, 1912.

<sup>8</sup> Report of Employer's Liability Commission of Ohio, Part I, p. XV.

The Nevada Law passed at session of 1911 and became operative July 1, 1911;

The New Hampshire Law approved April 15, 1911, and took effect January 1, 1912;

The Rhode Island and Providence Plantation Law approved April 29, 1912, and took effect October 1, 1912, and

The Federal Compensation Acts of May 30, 1908; March 4, 1911; March 11, 1912, to provide compensation to injured government employés on and after August 1, 1908.

The employer is personally liable for the compensations to be paid an injured worker under both systems, Employers' Liability Laws and Workmen's Compensation Acts. In the case of Compensation Acts, however, the only negligence recognized on the part of either the employer or employé, speaking generally, is that of wilful negligence. Where the employer is guilty of this form of negligence, he is penalized; where the wilful negligence is that of the employé, he is denied his compensation or is penalized or has his compensation reduced. In compensation acts the amount of the compensation is determined within a maximum and minimum limit by specified schedules of compensation fixed in the law and are graded on a basis of a certain percentage of the loss or impairment of the injured worker's average weekly wage. Jury trials are either largely or wholly eliminated, and the compensation to which the injured worker is entitled under the act is determined by a board of arbitration, a judge of some court or a board of awards created or specified by the act.

§ 6. The distinguishing characteristics of workmen's industrial insurance laws.—Workmen's Industrial Insurance Acts have been passed in five States as follows:



The Ohio Act enacted in May, 1911, and became operative January 1, 1912;

The Washington Act was passed March, 1911, and became operative October 1, 1911:

The Massachusetts Law approved July 28, 1911, and took effect July 1, 1912; and

The Montana Mining Law approved March 4, 1909, and declared unconstitutional by the Supreme Court of Montana, November, 1911.

The Maryland Act became operative April 15, 1912.

The enactment of Compensation Acts and Workmen's Industrial Insurance Laws, in particular, introduce remedies for the compensation of injured workmen, which on principle are new to the jurisprudence of the United States.

There are fundamental differences between the principles of Workmen's Industrial Insurance and those of Employer's Liability Laws or Compensation Acts of the type of the English, New York or Wisconsin Acts. The injured workman's claim under a state insurance act is against a fund which is created by contributions paid by employers, employes and the State or by any of them, in the form of an insurance premium which is collected by the taxing power of the State through the exercise of its police power. The employer's liability to his employes on account of personal injuries occurring in the due course of their employment, is discharged when he has paid the premiums provided by the act. The right of trial by jury is entirely eliminated in such cases, excepting the case where the employe is denied compensation of any kind and in that case he may sue the board of administration created by the act and have his case tried before a jury as heretofore but can not sue his employer. No negligence of any kind is recognized either on the part of the employer or employe, speaking generally, excepting the wilful negligence on the part of either. In case the employer caused the accident by wilful act or

by disregarding Factory Inspection acts and orders, he is subjected to some kind of penalty, and in case the injured worker wilfully caused the accident for the purpose of obtaining compensation, he is denied any compensation or has it reduced or is penalized. The compensation is paid in installments and based upon a certain percentage,—usually 50 to 60 per cent.—of the impairment of wages caused by the accident. The act usually fixes the length of time that such compensation may run and also a maximum and minimum total compensation. In the enactment of these statutes the State exercises its police power for the protection of the peace, safety and general welfare of the public.<sup>9</sup>

The primary object of industrial insurance for workmen is to provide a reasonable compensation which shall be paid without fail and at a minimum cost of administration, to the injured worker and his dependents, at stated intervals, so that his dependents shall not, in case they are minors, suffer in attaining a normal development which is necessary for self-support, and in order that neither the injured workman or his dependents shall become public charges, by reason of bodily injuries which the worker received in the due course of his employment.

From the standpoint of the public, the effect of a serious bodily injury received by such a workman, is the same whether the cause of the injury is attributable to the negligence of the employer or to that of his employé, or that of a fellow-workman, or is caused by an act of God. It is assumed that the case is very rare that either the employer or his employé will wilfully cause an injury covered by such a law.

<sup>9</sup> For full discussion of Insurance acts see Chapters IV, VII, X, XI, XVII.

## CHAPTER II.

### HISTORICAL SKETCH OF DEVELOPMENT OF WORKMEN'S INDUSTRIAL INSURANCE AND WORKMEN'S COMPENSATION LAWS IN THE UNITED STATES.

- | Sec.  | Sec.  |
|---|---|
| 7. Inception of movement for these laws.  | 11. Conclusions of the Chicago conference.                                  |
| 8. Previous investigation of the problem.   | 12. The work of the State commissions.                                      |
| 9. The Chicago conference of employer's liability and workmen's compensation commissions. | 13. Executive recommendations.  |
|   | 14. The Federal employer's liability and workmen's compensation commission. |
| 10. Subjects discussed.   |   |

§ 7. Inception of movement for these laws.—The movement for the enactment of more just and humane laws to take the place of the outgrown common-law remedy for the compensation of workmen for injuries received in the course of their employment became widespread in the United States about the beginning of this century. The movement received its first legislative recognition in New York when the Legislature of that state passed an act<sup>1</sup> which authorized the appointment of a commission “to inquire into the working of a law in the State of New York relative to the liability of employers to employés for industrial accidents and into the comparative efficiency, cost, justice, merit and defects of the laws in other states and countries relative to the same subject and as to causes of accidents to employés.”

Pursuant to the statute a commission of fourteen members was appointed in May, 1909, three from the Senate, five from the Assembly and six from industrial and professional walks of life, all of whom were eminent-

<sup>1</sup> Laws 1900, ch. 518.

ly qualified for the work to be done. This commission made its report to the legislature in March, 1910, and the bills reported by the commissioner were virtually adopted by the legislature with but few dissenting votes, there being only four dissenting votes in the House against it. The bill is in the form of a compulsory workmen's compensation law affecting eight classes of hazardous employments. A copy of the law and the opinion of the Court of Appeals holding the act unconstitutional are given in a later chapter.<sup>2</sup> The conclusions of the report of the New York commission respecting the important economic and sociological principles of law involved in their investigations are fully set forth in this opinion.

**§ 8. Previous investigation of the problem.**—Every civilized nation in Europe and many other nations in other parts of the world except the United States have discarded the old system of Employer's Liability based upon fault and substituted a system under which every industry bears the burden of relieving the distress caused by injuries to workers in any given industry practically without litigation. The German system of insuring the workers in all of its industries against sickness, accidents and old age, was inaugurated during the period from 1883 to 1887, a full discussion of which will be found in a later chapter.<sup>3</sup>

Great Britain enacted her Compensation Act in 1897 and the same was amended and broadened in its scope in 1900, 1906 and supplemented in March, 1912 by David Lloyd-George's Insurance Law against sickness, old-age and out-of-work.<sup>3a</sup> The prime mover in the adoption of the German system was Prince Bismarck. In

<sup>2</sup> See Chapter VI.

<sup>3</sup> See Chapter IV.

<sup>3a</sup> National Insurance Act, 1911, 1, 2 Geo. 5, ch. 55.

England these laws were ably championed by Lord Salisbury and Mr. Chamberlin.

The subject first attracted the attention of legislative agents in the United States in 1893 when the investigation of the German system by John Graham Brooks was published in The Fourth Special Report of the Commissioner of Labor of the United States, Carroll D. Wright. In 1898 William Franklin Willoughby published a careful study of foreign industrial insurance, and in 1900 the report of the Commissioner of Labor of New York<sup>4</sup> contained an intelligent study and report upon the experience of European nations with this kind of insurance and compensation for injured workers. The Commission which was appointed to investigate the subject in Massachusetts in 1904, recommended the adoption of a plan modeled after the English Compensation Act of 1897, but the bill reported by the commission was not passed. A commission in Illinois recommended a workmen's compensation law of a similar nature in 1907. This bill in like manner failed of passage. A commission was appointed in Connecticut in 1908 to investigate the same subject but it was unable to reach any definite conclusions.

During the year 1910 congress and the legislatures of Massachusetts, Minnesota, New Jersey, Connecticut, Ohio, Illinois, Wisconsin, Montana, and Washington authorized the creation of commissions to investigate employers liability laws and the various plans for the compensation of injured workmen, with the result that commissions were appointed in all of these states and by July, 1911, were engaged in their investigations.

### § 9. The Chicago conference of employer's liability and workmen's compensation commissions.—In 1910

<sup>4</sup> Senate Documents, 123d Session, 1900, Vol. 10, Part II, written by Adna F. Weber.

there was held in Chicago a Conference of Commissioners on Compensation for Industrial Accidents from United States government, Illinois, Massachusetts, Minnesota, Montana, New Jersey, New York, Ohio, Washington, Wisconsin, Connecticut and the committee on Uniform State Laws and United States Bureau of Labor. This conference met November 10, 1910, and remained in session for three days. Its officers were H. V. Mercer, of Minneapolis, chairman, and Amos T. Sanders, Clinton, Mass., secretary. The various commissions and their membership were as follows:

**United States Employers' Liability Commission:**

William Warner, U. S. S., Chairman; Charles J. Hughes, Jr., U. S. S.; William G. Brantley, M. C.; Edwin Denby, M. C.; W. C. Brown, President N. Y. Central R. R.; D. L. Cease, Editor The Railroad Trainman; Launcelot Packer, Secretary.

**Illinois Employers' Liability Commission, 317 Fisher Building, Chicago, Ill.:**

Charles Piez, Chairman; \*Edwin R. Wright, Secretary; Samuel A. Harper, Attorney; Mason B. Starling; \*E. T. Bent; M. J. Boyle; Patrick Carr; John Flora; \*George Golden; R. E. Conway, East St. Louis, Ill.; Daniel J. Gorman, Peoria, Ill.; P. A. Peterson, Rockford, Ill.

**Massachusetts Commission on Compensation for Industrial Accidents, State House, Boston, Mass.:**

\*James A. Lowell, Chairman, Boston; \*Amos T. Saunders, Secretary, Clinton; \*Magnus W. Alexander, Boston; \*Henry Howard, Boston; \*Joseph A. Parks, Fall River; \*Carroll W. Doten, Chief Investigator, Boston.

**Minnesota Employés' Compensation Commission:**

\*H. V. Mercer, Minneapolis, Minn.; \*Geo. M. Gillette, Minneapolis, Minn.; \*W. E. McEwen, St. Paul, Minn.

**Employers' Liability Commission of Montana:**

\*Judge W. L. Holloway, Chairman, Helena, Mont.; Neill Collins, Anaconda, Mont.; J. C. Loweny, Butte, Mont.; J. H. Hall, Helena, Mont.; H. G. Miller, Kalispell, Mont.; C. W. Goodale, Butte, Mont.; J. E. McNally, Butte, Mont.; W. F. Meyer, Deer Lodge, Mont.

**New Jersey Employers' Liability Commission:**

\*Wm. B. Dickson, President, New York, N. Y.; J. William Clark, Newark, N. J.; John T. Cosgrove, Elizabeth, N. J.; Samuel Botterill, East Orange, N. J.; Walter E. Edge, Atlantic City, N. J.; Edw. K. Mills, Morristown, N. J.; \*Dr. Albert A. Snowden, Secretary, Roselle Park, N. J.

**New York Commission on Employers' Liability, Etc.,  
Metropolitan Life Building, New York:**

\*J. Mayhew Wainwright, Chairman; Henry R. Seager, Vice-Chairman; Frank C. Platt; Howard R. Bayne; Alfred D. Lowe; George A. Voss; Frank B. Thorn; Cyrus W. Phillips; Edward D. Jackson; George W. Smith; Philip Titus; Otto M. Eidlitz; John Mitchell; Joseph P. Cotton, Jr., Counsel; Crystal Eastman, Secretary.

**Employers' Liability Commission of Ohio:**

\*James Harrington Boyd, Chairman, Toledo, Ohio; J. W. Perks, Springfield, Ohio; \*W. J. Rohr, Cincinnati, Ohio; \*W. J. Winans, Galion, Ohio; \*J. P. Smith, Cleveland, Ohio.

**Commission on Compensation for Industrial Accidents  
of Washington:**

Harold Preston, Counsel, Seattle, Wash.; Paul E. Page, E. S. Jones, J. A. Falconer, Clarence Parker, Jas. Anderson, George Von Eschen, F. B. Hubbard, Peter Henretty, J. H. Wallace.

**Wisconsin Industrial Insurance Committee:**

\*A. W. Sanborn, Chairman, Ashland, Wis.; E. T.

Fairchild, Milwaukee, Wis.; John J. Blaine, Boscobel, Wis.; Wallace Ingalls, Racine, Wis.; C. B. Culbertson, Stanley, Wis.; Walter D. Egan, Superior, Wis.; George G. Brew, West Milwaukee, Wis.; \*Paul J. Watrous, Secretary.

Connecticut Special Delegate:

\*Walter S. Schutz, Hartford, Conn.

Special Committee on Uniform Laws to Prepare a Uniform Workmen's Compensation Law:

\*Hollis R. Bailey, Chairman, 19 Congress Street, Boston; Charles Thaddeus Terry, Secretary, 100 Broadway, New York; \*Aldis B. Browne, 1419 F Street, N. W., Washington, D. C.; John R. Hardin, Prudential Building, Newark, N. J.; Peter W. Meldrim, 15 Bay Street, West, Savannah, Ga.; George Whitelock, 1407 Continental Trust Building, Baltimore, Md.; \*John H. Wigmore, Dean, Northwestern University School of Law, Northwestern University Building, Chicago, Ill.

United States Bureau of Labor:

\*Charles P. Neill, Commissioner of Labor, Washington, D. C.; \*L. W. Chaney.<sup>4a</sup>

§ 10. Subjects discussed.—The work of this conference covered seven sessions during which were discussed the following fourteen propositions relating to workmen's compensation:

1. What employments shall the act cover?
2. Shall all injuries be covered, irrespective of negligence?
3. Shall all persons engaged in such employments be included?
4. Shall compensation be paid in a lump sum or in installments?
5. Amount and duration of compensation?

<sup>4a</sup> The starred (\*) members were present at Conference.



6. Length of waiting period?
7. Shall dependents include aliens and illegitimate relations?
8. Shall employés contribute?
9. Shall it be permissible for employers to substitute voluntary schemes?
10. Method of determination of controversies?
11. Nature of scheme: Compensation, insurance, or State insurance, (a) Voluntary, (b) Compulsory?
12. Repeal of other laws?
13. Constitutionality?<sup>5</sup>

**§ 11. Conclusions of the Chicago conference.**—The conclusions of this conference were drafted into a law, the fundamental provisions of which may be briefly stated as follows: The act provides a compulsory and exclusive remedy, with a waiting period of two weeks during which time the injured workman may be allowed compensation by way of medical attendance and hospital bills and funeral expenses not to exceed \$100.00; it covers all hazardous employments and the compensation to be paid to injured workers or dependents is based upon 50% of the loss of wages caused by the injury without regard to fault or negligence excepting malicious negligence, payments to be made monthly and to continue so long as the disability lasts, not to exceed three hundred weeks, and lump sum payments to be made at the discretion of the Board of Advisors; the compensation in any case not to be more than \$10.00 per week and in case of death or total disability not less than \$5.00 per week; in case of death the compensation to dependents shall continue not longer than three hun-

<sup>5</sup> See page 29 of Proceedings of Commissions on Compensation for Industrial Accidents, Chicago, Nov. 10, 12, 1910, published by Amos T. Saunders, Secretary, Clinton, Massachusetts, 1910.

dred weeks and in case of total disability so long as total disability lasts not to exceed 300 weeks.<sup>6</sup>

§ 12. **The work of the State commissions.**—Since the Chicago Conference of Commissions and during the year 1911 and the first six months of 1912 the legislatures of the states of Ohio, Washington and Massachusetts have enacted Workmen's Industrial Insurance Laws and New Hampshire, New Jersey, Illinois, Michigan, Wisconsin, Kansas, Nevada, Rhode Island and California have enacted Workmen's Compensation Acts. During the spring of 1909 the Montana legislature enacted an Insurance Compensation law affecting the employés of mines only. Similar commissions are now at work on the recommendation of compensation acts in other states and are required to report to their respective legislatures.

§ 13. **Executive recommendations.**—Since 1908, the subject of workmen's compensation has received frequent consideration from Congress with respect to the employés of employers who are engaged in interstate commerce and in the government service. President Roosevelt on January 31, 1908, sent a message to the Congress in which he advocated the passage of such laws to bring relief to injured workers in such employments and indicated at the same time the duty of the legislatures of the several States in this respect. In that message the President said, "I also very urgently advise that a comprehensive act be passed providing for compensation by the government to all employés injured in the government service" \* \* \* and further, "The same broad principle which should apply to the government should ultimately be made applicable to all private employers. Where the nation has the power it should enact the laws to this effect. Where the States alone have

<sup>6</sup> See Proceedings Chicago Conference cited above.

the power they should enact the laws''<sup>7</sup> \* \* \* Governor Hughes, of New York in his 1909 annual message advocated the enactment of like legislation for the protection of injured employés.

§ 14. **The Federal employers' liability and workmen's compensation commission.**<sup>7a</sup>—This Commission authorized and created pursuant to a joint resolution<sup>8</sup> of Congress, conducted extensive investigations during the year 1910 and 1911 and inquired into the economic conditions affecting employés of railroads engaged in interstate commerce only. The commission conducted hearings in Washington and Chicago and made their report to Congress in December, 1911, and recommended a workmen's compensation law obligatory and exclusive in nature affecting the employés of railroads engaged in interstate commerce only.<sup>9</sup>

<sup>7</sup> The Federal Workmen's Compensation Act affecting employés of the Government service, was passed by Congress and approved by President Roosevelt, May 30th, 1908.

<sup>7a</sup> See Chapter XXII.

<sup>8</sup> Approved June 25, 1910.

<sup>9</sup> See message of the President, transmitting the report of the Employer's Liability and Workmen's Compensation Commission, Senate Document No. 338, 62d Congress, 2d Session.



## CHAPTER III.

### BRIEF HISTORICAL REVIEW OF THE GERMAN PLAN OF INSURANCE OF WORKMEN AGAINST ACCIDENTS, THE BRITISH COMPENSATION ACT, AND THE OPERATION OF THE SYSTEMS OF EMPLOYERS' LIABILITY IN GREAT BRITAIN AND THE UNITED STATES.

Sec.	Sec.
15. Chronological development of the subject.	18. British compensation legislation.
16. The insurance message of Emperor William I.	19. Some characteristics of German insurance legislation.
17. German industrial insurance acts.	

#### § 15. Chronological development of the subject.—

Frederick the Great claimed to be especially the king of the poor, and also claimed the right to use the state in any way he saw fit for their protection and uplifting. The Prussian law of a century ago acknowledged the famous right to work and to a living. The state, in its very nature, is the guardian of the weaker classes. In the common law of that time it is stated:

"It is the duty of the state to provide sustenance and support of those of its citizens who cannot provide sustenance for themselves. Work adapted to their strength and capacities shall be supplied to those who lack means and opportunities of earning a livelihood for themselves and those dependent upon them."

"Those who from laziness, love of idleness, or other irregular proclivities, do not choose to employ the means offered them of earning a livelihood, shall be kept to useful work by compulsion and punishment under proper control."

"The State is entitled and is bound to take such measures as will prevent the destitution of its citizens and check excessive extravagance."

"The police authorities of every place must provide for all poor and destitute persons whose subsistence cannot be insured in any other way."<sup>1</sup>

In this connection it is to be noted that prior to 1837 the principles of the common law of negligence or fault formed the only basis of recovery by a workman from his employer, on account of an accident to him.

In that year *Priestly v. Fowler*,<sup>2</sup> was decided, establishing the fellow servant rule, which relieves the master from liability for an injury received by a servant in the course of his employment, the cause of which was due to the negligence of a fellow servant engaged in the same employment.

Prussia, on November 3, 1838, took the initial step in recognizing the new principle of the liability of employers to provide compensation for industrial accidents. It was applicable to railroads only, but the act made the companies liable for accidents to passengers as well. The companies had only the defenses that the negligence of the person injured and an act of God was the cause of the accident.

Only four years later Judge Shaw, of Massachusetts,<sup>3</sup> laid down the doctrine of assumed risks.

In 1854 statutes were passed in Prussia compelling certain classes of employers to contribute one-half of the subscriptions to the fund of the sick associations formed according to local statutes.

It was also required that independent mechanics and manufacturers advance the contributions of their journeymen and assistants, with the proviso of charging it to the next payment of wages. As compensation for their share in the payment, the employer was assured a

<sup>1</sup> Fourth Special Report of the Commission of Labor of the United States, 1893, page 26.

<sup>2</sup> 3 M. & W. 1.

<sup>3</sup> *Farwell v. Boston, etc., R. Co.*, 4 Met. (Mass.) 49.

corresponding influence over the administration of the fund.

Several German States, as Brunswick, Mecklenburg and Saxony, went even further than Prussia in demanding that all employers should belong to some kind of mutual sick association.<sup>4</sup>

The act of June 21, 1869, for the North German Confederacy had the effect of releasing the bond of compulsory contributions to the sick fund by employers provided by the act of 1854.

In 1876 there were in all Prussia 5,239 compulsory societies, with 869,204 members. In 1880 the Prussian official statistics showed 839,602 members, belonging to registered friendly societies, 220,000 to the miners' societies, and 200,000 to non-registered friendly societies, in all, 1,259,602, at most out of 2,400,000 of those employed in mines and all industries which came within the law. Though there was still everywhere possibility of local compulsion, the act of 1876 relating to friendly and active societies had made it so little effective as to leave these scant results. One-half of those for whom the societies (Sickness, Relief and Burial) were meant were still uninsured. "The only good result of the act of 1876 was to make it wholly clear to all who cared to know the facts, that the most dependent class could only be reached by the strong hand of the state."<sup>5</sup>

Two years before the passing of the first insurance law—that of sickness,—it was said by Bismarck, in explaining the first draft of the accident bill, "It is the duty of humanity and Christianity, for the state to interest itself to a great degree in those of its members who need help. It is the duty of the state to cultivate beneficent institutions; this will be no novelty but a further solu-

<sup>4</sup> Fourth Special Report of the Commission of Labor of United States, 1893, p. 35.

<sup>5</sup> Fourth Special Report, p. 36.

tion of the modern idea of the state, a result of Christian morality; in accordance with such, the state should not merely discharge the duties of self-defense, but those also of a positive character in promoting the welfare of all its members, and especially of the weak and needy."<sup>6</sup>

In 1871 Germany enacted the famous employers' liability act, through which mine owners were made liable for death or accident that could be proved in any way, directly or indirectly, the fault of the owner. This law excludes the two defenses, assumption of the risk and fellow servant rules. Endless bitterness was not only caused by the workings of this law but extreme delays occurred in the settlement of cases, and the dissatisfaction here was only a part of that which showed itself throughout most of Germany.<sup>7</sup>

The excuse given for the failure of the voluntary insurance act of 1876 was "Singly we are too weak to carry out this insurance. It costs so much time and money, so that our competitors who do not insure, get an instant advantage over us who do not object to the extra burden if all of our rivals are compelled to bear it also."<sup>8</sup>

**§ 16. The insurance message of Emperor William I.**—Emperor William I came to Bismarck's support and gave his famous message on November 17, 1881, to the Reichstag. This message is called "The monument of the New Social Era." The Emperor said:

"We consider it our Imperial duty to impress upon the Reichstag the necessity of furthering the welfare of the working people. We should review with in-

<sup>6</sup> Die Reden von Fuerst Von Bismarck im Preussischen Landtage und in Deutschen Reichstag 1881-1883 besorgt Horst Kohl, Neunter Band (1893), Seite 9.

<sup>7</sup> Fourth Special Report, p. 43.

<sup>8</sup> Fourth Special Report, p. 46.



creased satisfaction the manifold successes, with which the Lord has blessed our Reign, could we carry with us to the grave the consciousness of having given our country an additional and lasting assurance of internal peace, and the conviction that we have rendered the needy that assistance to which they are justly entitled.

"Our efforts in this direction are certain of the approval of all the federated governments, and we confidently rely on the support of the Reichstag, without distinction of parties. In order to realize these views a bill for the insurance of workmen against industrial accidents will first of all be laid before you, after which a supplementary measure will be submitted providing for a general organization of industrial sick relief insurance.

"But likewise those who are disabled in consequence of old age and invalidity possess a well founded claim to a more ample relief on the part of the State than they have hitherto enjoyed. To devise the fittest ways and means for making such provisions, however difficult, is one of the highest obligations of every community based on the moral foundations of Christianity. A more intimate connection with the actual capability of the people, and a mode of turning these to account, incorporated societies, under the patronage and with the aid of the State, will, we trust, develop a scheme to solve which the State alone would be unequal."<sup>8a</sup>

**§ 17. German Industrial Insurance Acts.**—The end sought by these reformers was that a workingman, unfitted for work by sickness, accident, invalidity or old age, should have a legal right to due and just provision, in order not to be compelled to rely upon public charity. This could only be attained by a system of general and compulsory insurance, based on mutuality

<sup>8a</sup> Dr. George Zacher's Guide to Workmen's Insurance of the German Empire, pp. 1, 2.

and self-administration.<sup>9</sup> After 50 sittings the bill for sick insurance passed on May 31, 1883, with a majority of 117 votes. It did not include, at first, employes engaged in agriculture but it was contemplated, ultimately to include practically all employments.

Afterwards the following accident insurance laws were passed:

(1) The so-called fundamental law of July 6, 1884, for Industry, Transport Trades, Telegraph, the Army and Navy.

(2) The "Agricultural Law" of May 5, 1886, for Agriculture and Forestry.

(3) The "Building Law," July 11, 1887, for Building Trades so far not insured.

(4) The "Marine Law," July 13, 1887, for Navigation.

§ 18. **British compensation legislation.**—In England the first employers' liability act was passed in 1880. The most important provision of this law was the extension of the principle of the vice principal, but the relief appears to have been slight and unsatisfactory. The unimpaired rigor of the rule as to the assumption of risk became more in evidence as the use of safety appliances became more general and the number of accidents traceable to the employers' negligence fewer; so that after an unsuccessful attempt by Mr. Asquith, in 1893, to do away with the "Common Employment" rule and the implied contract of assumption of the risk, the time became ripe for the introduction of Mr. Chamberlain's Workmen's Compensation act, the gist of which is to provide unfailing and universal compensation for workingmen's injuries, without regard to negligence, which passed in 1897.

<sup>9</sup> Dr. George Zacher, Guide to the Workmen's Insurance of the German Empire, p. 3.

The efficiency of the British compensation act as compared with the employers' liability act is shown by the figures in 1904 which disclose that there were 3,065 deaths of employes in industrial accidents covered by the compensation act and of these 524 came before the county courts and but 112 were brought under the employers' liability act.

**§ 19. Some characteristics of German insurance legislation.**—In Germany the compensation is fixed officially, after an investigation by the police and by the organs of the trade associations without delay. Against the decisions of the trade association the entitled person may appeal within a month for an arbitration court of two representatives chosen by the employer and two by the employes, with a state official as chairman. The arbitration courts have been established and working since 1901, for both accident and invalidity insurance.<sup>10</sup>

As it is evident that both the trade associations and their individual members have a strong interest in diminishing the chances of accidents, the law confers on the trade associations, the important privilege of recommending regulations for the prevention of accidents. By such regulations not only the employers can be compelled, under penalty of higher assessments, to adopt the necessary measures for safety but also the workmen may be forced by fines to follow these rules.

"As regards the participation of the insured workmen in the organization of the Trade Associations, they are neither members of the Associations nor have they to bear any of the corporate burdens. They have, however, to take on themselves a portion of the aggregate liabilities caused by accidents, in so far as, together with

<sup>10</sup> Dr. George Zacher's Guide to Workmen's Insurance of the German Empire, p. 13.

the employers they contribute to the sick relief club, to which, for practical reasons, the care of patients is left during the first thirteen weeks of illness ("waiting time": about six and two-thirds percent of the whole burdens of Sick Insurance, i. e. four and one-half percent to the charge of the workmen). But the statistical calculations made show that the contributions of the workmen to the Accident Insurance stay in an inverse ratio to the contributions of the employers to the Sickness Insurance, for while the workmen, on their part, bear only eight percent of the entire burden for the accidents, the employers have to contribute four times as much (thirty-three and one-third percent) to the Sickness Insurance. From these reciprocal relations it follows as a necessity, that the employers should participate in the management of the Sick Associations, and that to the employés in their turn, must be conceded a share in the administration of the accident insurance. Accordingly the law permits representatives of the workmen, elected by them, to take part in the discussion of preventive regulations, and in the police investigations of accident cases, as well as in the proceedings of the Arbitration Courts and of the Imperial Insurance Office; on all these occasions the workmen enjoy the same rights as the representatives of the employers, and the law guarantees them the free exercise of this honorary co-operation."

## CHAPTER IV.

### THE ORIGIN AND DEVELOPMENT OF COMPULSORY INDUSTRIAL INSURANCE FOR WORKMEN IN THE GERMAN STATES—SICK INSURANCE, ACCIDENT INSURANCE, AND INVALIDITY AND OLD-AGE PENSIONS.

Sec.	Sec.
22c. Conditions in Germany which induced consideration of the subject.	27. Basis of compulsory insurance.
21. Influence of Fichte and Hegel.	28. German system described.
22. Views of Sismondi.	29. The relation of the German industrial insurance law to Socialism.
23. Views of Winkelblech.	30. Development of the insurance idea from the early guilds.
24. Views of Schaeffle, father of compulsory state insurance.	31. Miners' societies (Knappschaftskassen).
25. Views of Wagner.	32. Ethical basis of system.
26. State insurance a matter of German origin.	

§ 20. Conditions in Germany which induced consideration of the subject.—Germany was the pioneer of Workmen's Insurance against the economic insecurity arising out of the modern wage system. This was brought about by the peculiar condition which surrounded the German workmen and the peasant classes. The governments of the several German states, which ultimately were to constitute the German Empire, were monarchical in form. Their absolutism remained substantially intact until the creation of the constitutional government which brought into existence the German Empire. For this reason individualism had little opportunity to develop in Germany and industrial freedom among the working classes had been strangled. Individualism and industrial freedom developed in the latter part of the eighteenth century and the first half of the nineteenth century and was brought about and advanced by the discussion of German philosophers, as to what

should be the duties of the state to its citizens. This doctrine attained an advanced state of development with the enactment of insurance against sickness, accidents and old age during the period 1883-1889.

§ 21. **Influence of Fichte and Hegel.**—The philosophers Fichte and Hegel planted the germ of socialistic doctrine which took root during that period and which has since been developed by the German socialists to so high a degree. Concerning the influence of these writers it is said by John Graham Brooks: "The three laws of insurance against sickness, accident, and old age and invalidity confessedly rest upon a conception of society which is sharply opposed to what is loosely called individualism, or *laissez faire*. In the portentous mass of this insurance literature the thought is constantly expressed that the weaker members of society will be excluded from all that accords with our usual sense of justice and fair dealing until the centers of social influence, of which the first and most powerful is the state, become imbued with the idea that a large proportion of the misfortunes, sickness, accident, and premature age are social in origin rather than individual; that a vast part of these evils spring, not from the fault of the individual, but from sources over which the individual has little or no control. The philosopher Fichte applies this thought with such eloquent power to the duty of the state as to result in a distinct practical change of the state's attitude."<sup>1</sup>

The social philosopher Lassalle shaped much social legislation in Germany. He was greatly influenced by two books written by Fichte, one in 1796, the other, *Der geschlossene Handelsstaat*, 1800. Lassalle quotes many sentences from this latter work about the duties of the State which in all essentials are the same as the innum-

<sup>1</sup> Fourth Special Report of Commissioner of Labor, 1893, p. 19.

erable utterances that filled the discussion upon state insurance during the years which immediately preceded the enactment of these laws.

The State, according to Fichte's conception, "is not to be negative nor to have mere police function, but to be filled with Christian concern, especially for the weaker members. The conceptions of property and contract are such as compel such intervention on the part of the superior authority in order to realize the ends of justice and equality among men." It is necessary to deal with these things in order to understand the theory of the State's duty to which Bismarck and the economists constantly made their appeals during the period of agitation which preceded this legislation.

**§ 22. Views of Sismondi.**—Sismondi, another of the powerful writers on this subject, said in 1819: "We regard the government as having the duty of protecting the weak against the strong." He contrasts sharply the permanent interests of society as a whole with fluctuating personal and private interests amidst which the weak and ignorant may go to the wall. Precisely as in the case of Professor Winkelblech he seems to have been converted to this view by a journey through certain industrial centers of Europe. He describes the unhappy condition of the laborers in the manufacturing centers, adding at the close: "I became persuaded that governments were upon the wrong road." "A state may be very miserable indeed even though a few individuals gather colossal fortunes."

**§ 23. Views of Winkelblech.**—Professor Winkelblech, prior to 1850,<sup>2</sup> in criticising the liberal school, maintained "the necessity of a general obligatory insurance as alone adequate to protect laborers in their struggle with the conditions of the great industries." He

<sup>2</sup> Organization of Labor, Vol. II, p. 328.

saw in this a sure way of helping on toward a greater equality of conditions, and above all, that such insurance would free labor from the haunting sense of insecurity, which was one of the chief evils to be remedied.

**§ 24. Views of Schaeffle, father of compulsory state insurance.**—Dr. Schaeffle is called the father of compulsory state insurance. He conceived the plan in the year 1867 or prior thereto. He advanced the idea of such insurance in his work on *Kapitalismus und Socialismus*.<sup>3</sup> As Joseph Chamberlain has since done in England, he maintained that the existing charity administration was not only a vicious sort of communism at its worst, but did not even begin to reach its end. Even if state insurance was socialistic, it was less harmfully so, in Schaeffle's opinion, than the existing forms of charity. In place of the old charity he demanded a "nationalized general self-provision for the whole life" (*planmässige Selbstfürsorge für das ganze Leben*). The expense must be paid by the employer, but would in his opinion become a part of the cost of production. Though the laborers pay the contributions, their minimum wage would rise by that amount. He found in this compulsory insurance a close analogy to compulsory education, an argument also used by those who have pleaded in England for old age pensions.

**§ 25. Views of Wagner.**—The same arguments were made against this interference by the State for the protection of the weak that are made today against the compulsory workmen's compensation acts that are being adopted. These laws were opposed because they were socialistic and paternalistic. The second, strongest opposition was that of private insurance companies of whom Professor Wagner said "Your own selfish interests blind you to the merits of a question whose only

<sup>3</sup> pp. 700-702, 731.



decision can come from the higher ground of general social welfare."

The most forceful leader of the social political economists, whose agitation covered a period of sixteen years prior to the passage of the insurance laws, was Professor Wagner. His point of view is concisely stated in the following quotation:<sup>4</sup>

"Perhaps the most prominent thought in this relation is Wagner's assertion that the great mass of weaker laborers will not be helped out of their condition by the free struggle of private business interests. He holds that these masses are unable to cope with the conditions which capitalistic production imposes upon them. His reaction against the current economic individualism is sharp and direct. The State has here not merely an exceptional task to perform, but the permanent duty of strengthening the laborer in his struggle. Not only should co-operative groups in every form be favored, but trade organizations as well. There is no limit, except the purely practical one, to the State's duty of interference. The very meaning of the 'social question' to Wagner is this putting of the laborer into a position where the struggle for existence can be made as fair as the nature of the problem admits. That the odds are now greatly against the weaker workers is not only admitted, but vigorously maintained. Neither private interest, nor charity, nor self-help is adequate to do this work of evening up conditions. The State, inspired by strong moral purpose, must act a bold and positive part in this programme."

**§ 26. State insurance a matter of German origin.**—State insurance was long an economic and social theory before it became a fact, and the general principles to which the theory appealed for its sanction were used in

<sup>4</sup> Fourth Special Report, p. 23.

Austria, France and England with frank acknowledgment that Germany had originated the idea out of which it all grew.<sup>5</sup> \* \* \*

§ 27. **Basis of compulsory insurance.**—These ideas, respecting the duty of the State to the weaker members of society, point to the same conclusion as are deduced by Chief Justice Waite in *Munn v. Illinois*, 94 U. S. 113, in which he announced the conditions under which a public interest arose in the property of a person or corporation owing to the manner in which the property was used and consequently when and to what extent the State through the exercise of its police powers had a right to exercise its taxing power to take private property and to interfere with private contracts for the protection of the health, safety and general welfare of the public. To a greater extent can this be done by the government of the Dominion of Canada, under the British North America Act, Section 92, paragraph 13.

The views of Wagner in this report are set forth in the following paragraphs:<sup>6</sup>

“Public revenue to be so raised as to allow of the ‘communistic’ character of public bodies, above described, being developed wherever decided objections, consequent upon the peculiar circumstances of the case, do not exist. This ‘communistic’ character to be strengthened in favor of the poorer and socially weaker classes, with whom the economic and social struggle for existence and for social advancement is severest, by means of a system of administrative measures calculated especially to benefit them, yet the cost of which shall be defrayed by the general revenue and taxes; but this ‘communistic’ character of State activity to be weaker where the interests of the well-to-do and richer classes

<sup>5</sup> Fourth Special Report, p. 24.

<sup>6</sup> Fourth Special Report, p. 25.

of society come especially or exclusively into question. Here expenditures should be rather covered by a just system of taxes—including taxes based on the principle of taxation according to benefit—than by the use of the general revenue. This implies the regulation of the post, telegraph, and railway tariffs, judicial charges, school fees, etc.

Taxation to be so adjusted that, besides fulfilling its primary function, that of providing the revenue needed to cover public requirements, it may, as well as possible, fulfill a not less important indirect purpose, which is twofold: (1) Regulative interference with the distribution of the income and wealth of private persons, so far as that distribution is the product of free economic intercourse, as by the medium of prices, wages, interest, and rent, with a view to counteracting the harshness, injustice and excessive privileges caused by the distribution obtaining in this intercourse; (2) and at the same time regulative interference, supported necessarily by further administrative measures, and eventually by compulsion (as in the domain of industrial insurance) in private consumption. This latter can be done by making the lower classes provide—by means of direct and indirect taxes, especially indirect (excise), which in this connection are often very suitable—the revenue necessary for administrative purposes calculated to benefit them, this being affected by diverting income which they may be applying to improper, perhaps injurious, or at the least, less necessary and wholesome purposes (e. g., drink) to purposes more beneficial to society, the class, or the individual.”

Not only is every principle upon which such a step as compulsory industrial insurance could be based stated in the foregoing quotation but it stands in direct and unbroken line with the economic traditions of the Prussian monarchy.

It is to be further noted in commenting upon the quotation given above from Wagner, that his plan of governmental regulation affecting both the rich and the poor, provided for the taxing of both the rich and the poor in an equitable manner so as to correct the evils to which each class is inclined.

For example, under item (1), his plan of taxation which provided for the taxation of "income and wealth" his theory was that "so far as income resulted from economic intercourse, taxes should be levied with a view to counteracting the harshness, injustice and excessive privileges caused by the distribution obtaining in this intercourse."

But note also in like manner under item (2) of his plan of taxation that he would tax the poor by indirect taxation in such a manner as would correct their improvident tendencies, characteristic of them, and he includes compulsory industrial insurance among his regulative plans of interference.

The great significance of these theories of Wagner is the following: The Industrial Insurance which has been developed in Germany along the above lines is based upon the theory not that the employer is to make a contribution to the employé but that the funds necessary to be raised to carry out the German plan of industrial insurance shall be raised so that both the employer class and employé class shall contribute to the funds to the extent that each class is presumed to be equitably benefited in the establishment of a new economic return.

**§ 28. German system described.**—Professor Charles R. Henderson<sup>7</sup> describes the German system as follows: "It is sometimes asserted that the German system of workingmen's insurance is nothing better than a dis-

<sup>7</sup> Industrial Insurance in the United States, 2nd ed., p. 7.

guised form of poor relief, a kind of gift from above paid by the government at the expense of taxpayers to prevent rebellion of the 'lower classes.' The classic message of the emperor<sup>8</sup> gives a more just interpretation of the purpose of the 'social policy' of the nation. The demand is made on the basis of the duty to the people and the common welfare, because health, security and freedom from dependence are not a mere class interest but belong of right to all. Those who risk the greatest danger to life and limb should not be left to carry the entire cost of that hazard.

Insurance is not poor relief but common justice, a method of fairly distributing the extraordinary costs of civilization. Since such insurance never has been made general and never can be made general by any voluntary scheme, the government, the agent of the common intelligence, conscience and will, intervenes far enough to enforce obligation, to regulate the method and to insure the rights of all concerned. Thus in the United States the government, under the right of eminent domain, takes landed property for a consideration and gives it to railroads for right of way or as subsidy; and in turn prescribes the terms on which a railway corporation can enjoy these special privileges. Thus also the federal government grants privileges to certain banks and controls the method of their administration. In Germany the government seeks in its insurance laws to encourage and stimulate the interest of both the employers and employés in the system. The entire system is based on the principles of mutual benefit, self-government and local initiative. Both employers and employés have a right to participate in the administration and judicial application of the law, as both share equitably in the cost. It is not state insurance, but insurance on the

<sup>8</sup> Ante, § 16.

basis of mutuality and self-government, under the regulation of law. It is precisely in this administration that the workingmen feel themselves to be free agents and intelligent participants in the affairs of their country. There is no taint of charity from first to last; each man pays his share of the cost, has a voice in the control and can set up a legal claim when he needs his benefits. All this removes the insurance system by the diameter of the moral world from poor relief and private charity.

The German system does not make other forms of protection superfluous, since it simply provides for the necessities of existence; it does not remove the motive for forming trade unions and fraternal societies, nor for investing in extra insurance in life insurance companies, nor for savings. All these organizations of thrift flourish in Germany." And again he says:<sup>9</sup>

"It is sometimes asserted—in advance of proof—that accident, sickness, and old age insurance is a burden upon the capital, industry, and commerce of a nation. As Germany is the country which annually does more than other nations in this direction it seems not unfair to mention the fact that the years of trial of her system of insurance have been precisely the years in which that nation has forged to the front rank in the world of manufactures and commerce. The nation has grown rich and the workingmen have improved their condition so that they are not anxious to emigrate as formerly. On all these points we have several recent publications which reveal the situation with a wealth of statistical evidence."

In another authoritative work<sup>10</sup> occurs the following comment on this scheme of industrial insurance:

"It may be briefly described as follows: In carrying

<sup>9</sup> Henderson Industrial Insurance, p. 6.

<sup>10</sup> Frankel & Dawson on Workmen's Insurance in Europe, p. 9.  
(Prepared under Russell Sage Foundation.)

on any given industry for the benefit of those who will enjoy the products or the services supplied thereby, there will be, on the whole, taking into account all the various establishments engaged in those industries, a more or less stable aggregate amount of loss and damage occasioned by industrial accidents. While each particular accident, considered by itself, might appear to have been preventable if an extraordinary degree of caution had been exercised, it will also appear, when the losses are spread over the entire industry, and especially when the experience of many years is combined, that there is a more or less steady ratio between the financial loss and the financial value of the entire product, indicating that accidents are governed by laws of probability and are to a certain degree inevitable.

In other words, this loss or damage, as much as loss or damage by destruction of material, by wear and tear of machinery, etc., is a part of the cost of the commodity in the production of which the workingman was employed at the time the accident took place.

It follows that the workingman, or his family in the event of his death, should be compensated in a reasonable amount for the consequences of an industrial accident; not in order that some one shall be mulcted, on the ground that he was at fault, but in order that this portion of the cost of the product or services shall not be transferred from the employer and the ultimate consumer to the workingman and his family, crushing them in many cases, and eventually shifting the burden to the community in the most undesirable form of charity." Further along<sup>11</sup> the authors say:

"As stated above, the new statutes provide for indemnification of workingmen for the consequences of industrial accidents on the principle that their cost

<sup>11</sup> Henderson Industrial Insurance, p. 18.

should fall upon the employer, not as a punishment, nor because he was negligent, but merely to throw the burden ultimately on those who enjoy the product."

§ 29. **The relation of the German Industrial Insurance Law to Socialism.**—The Prussian government prior to the war of 1870-71 entertained no anxiety about socialism. It had cause for anxiety, however, when the socialist vote increased from 350,000 in 1874 to about 500,000 in 1877.<sup>12</sup>

Lassalle's type of practical socialism (productive co-operation of associations) from the time of the Socialistic congress of 1875 gave way more and more to the Marx type which attacked the then existing industrial order with its wage system, private rent and interest. They ceased to talk about the co-operative association of Lassalle's type. Following the two attempts on the life of the German Emperor in 1878, Bismarck had drastic laws passed prohibiting meetings, suppressing clubs and publications active in the propagation of the Marx doctrines. The quotation below not only shows what the Marx doctrine was but what the government was striking at.

"The endeavors of social democracy are aimed at the practical realization of the radical theories of modern socialism and communism. According to these theories the present system of production is uneconomical, and must be rejected as an unjust exploitation of labor by capital. Labor is to be emancipated from capital; private capital is to be converted into collective capital; individual production, regulated by competition, is to be converted into systematic co-operative production; and the individual is to be absorbed in society. The social democratic movement differs greatly from all humanitarian movements in that it proceeds from the

<sup>12</sup> Fourth Special Report, p. 27.



assumption that the amelioration of the condition of the working classes is impossible on the basis of the present social system, and can only be attained by the social revolution spoken of. This social revolution is to be effected by the co-operation of the working classes of all states with the simultaneous subversion of the existing constitutions. The movement has especially taken this revolutionary and international character since the foundation of the International Workingmen's association in London in September, 1864. \* \* \* It is, in fact, a question of breaking away from the legal development of civilized states and of the complete subversion of the prevailing system of property. The organization of the proletariat, the destruction of the existing order of state and society, and the establishment of the socialistic community and the socialistic state by the organized proletariat—these are the avowed aims of social democracy.

The well organized socialistic agitation, carried on by speech and writings with passionate energy, is in accord with these ends. This agitation seeks to disseminate amongst the poor and less educated classes of the population discontent with their lot as well as the conviction that under the present regime their condition is hopeless, and to excite them as the "disinherited" to envy and hatred of the upper classes. The moral and religious convictions which hold society together are shattered; reverence and piety are ridiculed; the legal notions of the masses are confused; and respect for the law is destroyed. The most odious attacks and abuse which are leveled at the German empire and its constitutions—at royalty and the army, whose glorious history is slandered—give the socialist agitation in this country a specifically anti-national stamp; for it estranges the minds of the people from native customs and from the fatherland. The representations which are given, both by spoken and written word, of former revo-

lutionary events and the glorification of well known leaders of revolution, as well as the acts of the Paris commune, are calculated to excite revolutionary desires and passions and to dispose the masses to acts of violence. The law of self-preservation, therefore, compels the state and society to oppose the social democratic movement with decision; and above all, the state is bound to protect the legal system which is threatened by social democracy, and to put restraints upon socialistic agitation. True thought can not be repressed by external compulsion; the movements of minds can only be overcome in intellectual combat. Still, when such movements take wrong ways and threaten to become destructive, the means for their extension can and should be taken away by legal means.

The socialistic agitation, as carried on for years, is a continued appeal to violence and to the passions of the masses with a view to the subversion of state and social order. The state can check such an enterprise as this by depriving social democracy of its most important means of agitation and by destroying its organization; and it must do this unless it is willing to surrender its existence, and unless there is to grow up amongst the population the conviction either that the state is impotent or that the aims of social democracy are justifiable. \* \* \* Social democracy has declared war against the state and society, and has proclaimed their subversion to be its aim. It has forsaken the ground of equal right for all, and it can not complain if the law should only be exercised in its favor to the extent consistent with the security and order of the state."<sup>13</sup>

While Bismarck admired Lassalle's doctrines and aims he recognized a vital difference between them and those of Marx. He took a bold stand against the doc-

---

<sup>13</sup> Fourth Special Report, p. 27.

trines of Marx and as boldly stood with Lassalle in saying "the state shall be put fearlessly at the disposal of the laboring classes" and presented to the Reichstag his elaborate scheme of compulsory insurance for the working masses.

**§ 30. Development of the insurance idea from the early guilds.**— We have next to briefly point out the facts of the origin and development of Industrial Insurance by the German guild of a special type called Knappschaftskasse. For five hundred years there have existed in Germany certain guilds which are privileged societies of employers (Handwerkmeisters) or masters for their own benefit as well as for the benefit of their journeymen and apprentices. There were connected with these guilds benefit societies, relief, burial, and sick associations.

It must be noted that the development of industry in Germany is of so much later date than in England or America that some illustrations must be given in order to appreciate the bearing of trade legislation upon social questions.

Industry with a world market had attained such a development in 1802 in England as to bring into existence the first interference with the freedom of industry—the Morals and Health act. In 1832 the Reform Bill was enacted. During this period of 30 years, the population of cities in England, like Manchester, had on an average increased 150 per cent. The earlier economic students could not foresee the conditions which this new grouping of population would bring upon society. During the period of 1802 to 1844 many acts were passed in England first to protect working-children, then later for the protection of working-women. Scarcely a law has been passed to guard the safety of the apprentice, the child, the woman, or of poor men in dangerous employ-

ments, that has not been long and stubbornly fought upon theoretical grounds as to the nature of trade, of economic law, or of natural law. Today humane principles of legislation have been so far developed in respect to legislation demanded for any set of workmen as to make the inquiry one not concerning economic or natural law but rather concerning the plain practical exigencies of the health and safety of the laborers. Two generations passed away before this position was reached even by statesmen!

This principle of insurance has never been denied in Germany, except in part by those, who, during the period from 1830 to 1870, were the followers of Adam Smith and known as the Manchester party in Germany. They exercised a powerful and beneficial influence upon the economic policy of that country.

However, beginning with the compulsory industrial insurance legislation of 1883, legislation of this kind has freed itself almost wholly from this economic liberalism. It should be noted, however, that among the achievements of this school there should be mentioned: the Tariff Union; Uniformity in Weights and Measures; the doing away with imprisonment for debt and the usury laws; the removal of marriage restrictions, of river tolls, and "especially the larger freedom introduced into the whole body of trade regulations (*Gewerbeordnung*), together with the *Freizügigkeit* (the right to go about the country as one likes), against which principle, ominously enough, powerful voices are now more and more heard."<sup>14</sup>

Bismarck rejected the liberal and voluntary industrial policy and appealed to the earlier and older social legislation which preceded the liberal legislation.

<sup>14</sup> Fourth Special Report, p. 31.

John Graham Brooks describes the conditions surrounding the worker and his guilds as follows:

"A state of serfdom practically existed in Bavaria until 1808. Freedom to choose one's handicraft, even, was not allowed in other parts of Germany until 1810. Until the revolution of 1848 countless petty restrictions hemmed in the life of the laborer as well as of industry in general. The most advanced part of Germany, Prussia, only brought in liberty for the laborer to move freely from town to town (*Freizügigkeit*) in 1842. Though the laws of Stein and Hardenburg had done so much to destroy the old guilds, they yet dragged lumberingly along until the Prussian trade regulations of 1845, which mark so important a change in this history as to demand closer consideration. The law of 1842, allowing laborers to pass freely from one place to another, introduced changes as great as the Stein legislation of 1811, which broke down so many of the old guild privileges. From a condition under which the choice of a trade was for the laborer and not by him, to conditions under which he could freely elect his craft, the difference was profound. In many parts of Germany the old trade monopolies existed in such form as to make the free development of trade impossible. Not only was competition shut out in the more considerable trades of tinning and milling, but especially in the minor provinces, such monopolies extended to the smaller trades of the barber and chimney-sweep. That these special privileges of the guilds would all have been swept away if the Stein legislation had been allowed to do its work is evident. The new freedom was feared, however, and the trade regulations of 1845 are a protest against the destruction of vested rights. That portion of the trade laws which more especially concerns us recognizes two kinds of

sick associations—the apprentice society and the guild (Innung).

In section 144 the apprentices and assistants are permitted to retain their mutual benefit societies, but it is reserved to change and adapt them to new and existing circumstances. New societies may also be formed under conditions fixed by government. An apprentice is not allowed to be excluded from such a society because he does not work with a member of a guild (section 169). To the guilds is also given the right to form sick, burial and relief societies, as well as savings banks, though they are not compelled to form such society for every branch of industry. It will be seen that these laws of 1845, in reacting against those forces which threatened to destroy the guilds, yet endeavored to preserve as much liberty, self-government, and self-discipline as was possible in an effort to save the guilds and continue their work. The workmen also were frightened by the loss of a powerful influence which the guild had secured to them. Before 1845 they expressed fears such as would be felt by trade unionists of today if their rights of organizing were threatened. The conservative character of the law is, however, seen in such provisions as that which compels those who form a guild to prove their capacity before some authorized body of examiners, as the academy of arts or the committee appointed for such purpose. Consent to enter a guild might be refused by the communal authorities to criminals, to bankrupts, to those residing where a similar guild already exists, etc. All persons in mechanical trades who belong to no guild could by local statute be formed into an 'inferior guild.' The community is here supreme over the decisions of the individual. Although the elite workmen were freed from compulsion to join such societies, the less able workmen were so far under con-

strait that they must give satisfactory reason before the authorities why they failed to form or join some benefit society."<sup>15</sup>

**§ 31. Miners' societies (Knappschaftskassen).—**The fundamental principles of workmen's insurance as illustrated by the miners societies are thus pointed out by Mr. Brooks:

"An illustration may now be given from among the miner's societies (Knappschaftskassen) which will illustrate in more detail the actual working of the insurance principle. In this bit of history is to be seen almost every feature, good and bad, which the imperial scheme now presents. These societies provided for sickness, accident, burial, and also granted pensions to orphans, widows, and invalids, thus covering even more than the state laws now cover. In its later development the mining society was administered by a committee composed half of employers, half of laborers. The contributions were also divided between both. The employer was made responsible for the entire sum, being allowed later to deduct the laborers' share from the wages when paid. Thus it is seen why this special form of association was chosen by the government as a type upon which to build the imperial structure."<sup>16</sup>

**§ 32. Ethical basis of system.—**Reviewing the long and serious strife which attended the development of the principles of compulsory workmen's insurance during the period of 1790 to 1854 it is important to recognize the incontestable fact of history, that these laws were the outgrowth of the ethical elements of sympathy, pity, and good will, playing so important a part as to mould

<sup>15</sup> Fourth Special Report, 1893, p. 31.

<sup>16</sup> Fourth Special Report, p. 37.

first the customs and then the laws of their primitive insurance societies. Here Mr. Brooks further observes:

“Nothing is more obvious than the fact that mere business did not alone dictate those first regulations that made the strong and the fortunate willingly help to bear the burden of the weak. The opponents of state insurance make no issue as to this fact; they only insist that the state cannot, from its very nature, carry out and enforce such principles as those upon which universal insurance rests. The believers in such state insurance carry over the ethical idea, that already existed in the small free group, into the state asserting that the state, with compulsory powers, is alone competent to secure the blessing of such insurance to the whole masses of the people. Thus there is a distinct issue of fact rather than of theory. From the thirteenth century to the time of Frederick the Great, nothing like compulsory insurance, even in small mines, can be said to have existed. Until the Prussian law of 1854 there was no general state compulsion for miners.”<sup>17</sup>

<sup>17</sup> Fourth Special Report, p. 39.



## CHAPTER V.

### THE ECONOMIC BASIS OF COMPULSORY INDUSTRIAL INSURANCE AND COMPENSATION LAWS FOR INJURED WORKMEN.

- | Sec.  | Sec.   |
|---|--|
| 33. Statement of problem from the economic standpoint.                                | 44. Social and economic results of accidents.  |
| 34. Statistical studies exhibiting effects of old and new systems of compensation.    | 45. Liability insurance statistics in Ohio.  |
| 35. Statistical experience under compulsory State insurance in Germany.               | 46. German statistics analyzed.  |
| 36. The question of fault and prevention of accidents—compensation—German statistics. | 47. Classification of causes of accidents in Germany.  |
| 37. Experience in New York.   | 48. Miscellaneous data.  |
| 38. The Pittsburgh survey.  | 49. Statistical results of the per cent. of workingmen who receive compensation under the common law and liability laws. |
| 39. The Wisconsin bureau of statistics.   | 50. Fundamental economic conclusions.  |
| 40. The report of the Illinois commission.  | 51. Remedies proposed—German and English plans.  |
| 41. Ohio statistics.  | 52. Specific provision against the economic insecurity of workingmen in the United States.                               |
| 42. Average amount received in settlement in Ohio under old system.                   | 53. Argument for joint contribution by employer and employé.   |
| 43. Attorney fees under old system in Ohio.   |  |

§ 33. Statement of problem from the economic standpoint.—It is proposed in this chapter to present the economic basis for the substitution of a new remedy, namely, compulsory industrial insurance for workingmen, or workmen's compensation acts, in lieu of the common and statutory liability law remedies, as a means for compensating workmen who are injured in course of their employment.

It will be shown not only that the common (and liability) law remedy in its present form does not furnish compensation of any kind in to exceed 12% of the cases of injuries to employés, and even in those cases in which compensation is paid, the compensation paid does not on the average exceed one-fifth of what is regarded as adequate compensation, but also that no modification of the common law remedy can be made whereby these results will be materially improved. Hence that the old common law remedy must be abandoned and a new remedy substituted therefor.

**§ 34. Statistical studies exhibiting effects of old and new systems of compensation.**—In the evolution of economic and sociological problems of a nation, already largely industrialized, gross inequalities in the material condition of the different classes of its citizens arise, and when the public mind becomes conscious of the hardships flowing from these inequalities, the legislative and judicial arms of the state are called upon to regulate, to equalize, and to adjudicate equitably such economic abuses and hardships.

The first steps to be taken in adjusting and relieving society of the said abuses are to inquire into and determine what the exact causal facts are, from which flow these abuses, before the legislative and judicial arms of the State can formulate and apply a just and equitable remedy. It is the determination of the causal facts of these economic abuses and the magnitude of their evil effects that constitute the most difficult step to accomplish, and upon the clear determination of which the legislatures and the courts of last resort insist first upon knowing, before they will enact and sustain the putting into operation of an adequate remedy for the injurious economic abuses involved in this problem.

Therefore, the discussion of "what provisions can be made for workingmen and their dependents, to avoid the economic insecurity which accompanies the modern wage system," resolves itself into the following plan:

(A) The location and determination of the causal facts and their fundamental characteristics which produce the economic insecurity of workingmen, and characteristics which accompany the modern wage system, shall first be analyzed.

(B) The remedy to cure these economic inequalities and in what way the legislative and judicial authorities of the States can put the proposed remedy into operation and perpetuate the same.

**§ 35. Statistical experience under compulsory State insurance in Germany.**—In 1887 there were insured against sickness and accidents in Germany 3,861,560 workingmen among 319,453 establishments,<sup>1</sup> and the number of notices of accidents was 106,001. A special analysis of the different elements of the causes of these accidents will be found in the following section.

	Persons
In 1907, these were insured in Germany against accidents: <sup>2</sup>	Insured
Industrial, building, and marine trade associations (associations, 66; establishments, 637,118)-----	9,018,367
Agriculture and forestry trade associations (associations, 48; establishments, 4,710,401)-----	11,189,071
State executive boards (boards, 535)-----	964,589
	<hr/> 21,172,027
In 1897 there were insured in Germany against accidents in the same associations and 409 State executive boards, in round numbers-----	18,500,000

**§ 36. The question of fault and prevention of accidents—Compensation—German statistics.**—The follow-

<sup>1</sup> Fourth Special Report of the Commissioner of Labor, 1893, p. 82.

<sup>2</sup> Frankel and Dawson, Workingman's Insurance in Europe, 1910, p. 101.

ing table shows the accident statistics of industries for the three years, 1887,<sup>3</sup> 1897<sup>3</sup> and 1907,<sup>4</sup> under the German law:

	1887	1897	1907 (46,000 accidents)
By fault of—	Per cent.	Per cent.	Per cent.
Employer -----	20.47	17.30	16.81
Employé -----	26.56	29.74	28.89
Both parties -----	8.01	10.14	9.94
<hr/>			
Due to negligence of the parties--	55.04	57.18	55.64
Due to inevitable risks of the in- dustries and other causes---	44.96	42.82	44.36
<hr/>			
	100.00	100.00	100.00

This table, covering a period of 20 years of experience, shows not only the elements of fault which enter into the problem, but also supplies a valuable basis for further improvement of preventive measures, since from 55 to 57 per cent. of all accidents are due either to the fault of the employer, employé, or their combined negligence.

It is of interest in this connection that the tables of the Minnesota and Wisconsin labor departments ascribe from 40 to 50 per cent. of all industrial accidents, on the average, as due solely to the inevitable risks of the business. The Austrian tables show 70 per cent. are attributed to this cause.<sup>5</sup>

It is first to be noted that this table represents the experience of the operation of the compulsory German State Insurance Law, for a period of 25 years, under the operation of which, from 4,000,000 to 21,000,000 workmen and their dependents engaged in all possible in-

<sup>3</sup> Dr. George Zacher, Introduction to Workmen's Insurance in Germany, p. 14.

<sup>4</sup> Bulletin of Bureau of Labor, 1908, p. 120 and § 47.

<sup>5</sup> Report of the New York Commission, p. 25.

dustrial, governmental, and agricultural occupations of a great nation, with respect to the determination of the element of fault entering into the causes of accidents to workmen. We shall define the natural hazard of any occupation by the equation:

Inevitable risk + combined negligence of both employer and employé = natural hazard.

From this table it follows:

	1887	1897	1907
Fault of both parties.....	8.01	10.14	9.94
Inevitable risks .....	44.96	42.82	44.36
Natural hazard.....	52.97	52.96	54.30
Average, 53.41 per cent.			

During the period 1887-1897 there were put under the operation of the German law the workingmen employed in the occupations of agriculture, forestry, building trades, to the number of 12,250,000, who heretofore were not insured.<sup>6</sup> This large class of workingmen were the most ignorant and poorest trained of all the workingmen insured under the law. It will be seen that the per cent. of the causes of accidents attributable to the negligence of the employé increased from 26.56 per cent. in 1887 to 29.74 per cent. in 1897, an increase of almost 3 per cent. During the next decade, 1897-1907, this element of fault fell from 29.74 per cent. to 28.89 per cent. while the number of such workingmen remained practically at the 12,000,000 mark. This is due to a gradual improvement of the ways and means of preventing accidents so carefully studied in Germany.

The superior intelligence of the employers made a more marked improvement in the reduction of the element of fault due to the employer's negligence.

Thus the causes of accidents attributable to the em-

<sup>6</sup> Frankel and Dawson, *Workingmen's Insurance in Europe*, p. 101.

ployer in 1887 was 20.47 per cent; in 1897 it fell to 17.30 per cent; and during the next decade it fell to 16.81 per cent in 1907. But, notwithstanding these improvements in the reduction of the element of fault, yet the per cent of the causes of accidents due to natural hazard remains practically constant, as shown, at 53.41 per cent.

This leads us to the first fundamental conclusion of primary evidence in our problem:

That no matter how careful the employer is, or how careful the employé may be, or how high the efficiency of the State may rise in the application of ways and means in the prevention of accidents, the natural hazard remains practically constant. That on the average from 52 per cent to 53 per cent of the causes of all accidents are due to the natural hazard of the business.

This is the first element of insecurity of workingmen under the modern wage system, for the reason that an injured workman can not recover at all in an action at law for damages on account of an accident received while working for his master until he can prove that his master was negligent and that such negligence was a contributing cause to his injury.

The object of giving an injured workman a cause of action for injuries is not only to compensate the workman especially in the case of death or total disability, but principally to furnish some compensation to his dependents, who might become public charges when their means of support are cut off by such an accident.

The entire equity side of our courts has been built up on the theory that justice should be done between man and man when the common law does not furnish any remedy or does not furnish an adequate remedy.

Here in this problem there is the one element alone of 52 per cent of all cases of injury for which the common law does not presume to furnish any relief at all—

none for the injured workman and none for the dependents who, in most of such cases, must be supported by the community in which they live. This leads us to the second fundamental conclusion of primary evidence in our problem.

The table shows that the element of the causes of accidents which were attributable to the workmen's own negligence (taking the workmen of a State or Nation as a whole) is on the average:  $\frac{1}{3}$  (26.56 per cent + 29.74 per cent + 28.89 per cent) = 28.39 per cent.

The effect on dependents is just the same whether the cause of the injury was due to the negligence of the employé, to that of the employer, or to the natural hazard of the business. The common law in theory denies the injured workman relief in all of these cases, to-wit, 28.39 per cent, and, further, there is no cause of action at all in the 53.41 per cent of the cases due to the natural hazard. Or in the combination of the two elements, natural hazard and negligence of the workmen, that is, in 81.80 per cent of the cases of injury the common law does not presume to furnish any compensation either to the workman or his dependents.

The third conclusion of primary evidence in our problem relating to the economic insecurity of the workman under the modern wage system in the United States is:

That the per cent of cases of injuries to workmen, the causes of which are attributable to the negligence of the employer, is on the average but 18.20 per cent of the cases.

It is susceptible of proof that the foregoing elements of negligence of employer, employé, and natural hazard are practically the same in the United States as they are in Germany.

It will be hereafter shown in presenting the "Statistical experience of workmen under the common law

and liability laws in the United States," that while in theory the common-law remedy furnishes compensation in 18.20 per cent. of cases of injuries to workingmen, that, however, in practice that compensation in any amount is paid in less than 6 per cent. to less than 12½ per cent. of the cases, and then only in amounts about one-fifth of adequate compensation.

§ 37. **Experience in New York.**—During the years 1906, 1907 and 1908, ten insurance companies, which keep employers' liability records, doing business in New York,<sup>7</sup> received in premiums from—

Employers .....	\$23,524,000
Paid to injured employes.....	8,560,000
	<hr/>
Waste .....	\$14,964,000

Nothing could more strikingly set forth the waste of the present system. Only 36.34 per cent of what employers pay in premiums for liability insurance is paid in settlement of claims and suits. Thus, for every \$100 paid out by employers for protection against liability to their injured workmen, less than \$37 is paid to those workmen; \$63 goes to pay the salaries of attorneys and claim agents whose business it is to defeat the claims of the injured, to the cost of soliciting business, to the cost of administration, to court costs, and to profit.

Out of this 36.34 per cent the injured employé must pay his attorney. The same report shows that the attorney gets 26.13 per cent of what is paid to the injured employé. This investigation covers 46 cases where the recovery was above \$1,500 each. In small recoveries the attorney fees take a larger proportion. This report shows that not more than somewhere between 20 and 25 per cent of the money paid by the employing class goes

<sup>7</sup> First report of the Employers' Liability Commission, New York, p. 31.



actually into the pockets of injured workmen for their dependent families in death cases.

**§ 38. The Pittsburgh survey.**<sup>7a</sup>—The investigation recently conducted in Allegheny county, Pa., under the direction of the Pittsburgh survey showed that out of 355 cases of men killed in industrial accidents, all of whom were contributing to the support of others and two-thirds of whom were married, 89 of the families left received not more than \$100, and 61 families received something more than this \$100. In other words, 57 per cent. of these families were left by their employers to bear the entire burden of income loss and granting that all unknown claims would be decided for the plaintiffs, then only 26 per cent. received in compensation for the death of a regular income provided more than \$500, a sum which would approximate one year's income of the lowest paid of the workers killed.

The proportion of the loss borne by employers in injury cases does not differ greatly from that in death cases.

Thus, out of 288 injury cases, of the married men alone, 56 per cent received no compensation; of single men contributing to the support of others, 69 per cent received no compensation; of single men without dependents, 80 per cent received no compensation.

**§ 39. The Wisconsin bureau of statistics.**—The great financial losses borne by the workmen are set forth by the Wisconsin bureau of labor and statistics in the following report of 306 non-fatal cases of injuries:

	Cases.	Per cent.
Received nothing from employer-----	72	23.5
Received amount of doctor bill only-----	99	32.4
Received amount of part of doctor bill only-----	15	4.9
Received something in addition to doctor bills-----	91	29.7
Received something but not doctor bills-----	29	9.5
<b>Total -----</b>	<b>306</b>	<b>100.0</b>

<sup>7a</sup> In Work Accidents and their Cost by Crystal Eastman, Charities and the Commons, March, 1909.

In other words, we may say that in two-thirds of the cases part or all of the doctor bills were paid, but in less than one-third was anything more paid, and in about one-fourth of the cases nothing whatever was paid.

Of 131 non-fatal cases in Wisconsin, concerning which reports were secured by factory inspectors, the following disposition was made:

	Cases.	Per cent.
Received nothing from employer.....	28	21.37
Received doctor bills only.....	56	42.75
Received something—doctor bills.....	10	7.63
Received something, but not doctor bills.....	34	25.96
Not settled .....	3	2.29
<b>Total .....</b>	<b>131</b>	<b>100.00</b>

§ 40. The report of the Illinois commission.—The employers' liability commission of the State of Illinois has recently made a report of its investigation of industrial accidents and employers' liability at a cost of \$10,000.<sup>8</sup>

More than 5,000 individual accidents were investigated and recorded, together with comparative figures and analysis. A few words as to what the report shows may be of value:

Six hundred and fourteen fatal accidents are recorded.

The families of 214 of these workers received nothing in return for the loss of the bread-winner.

One hundred and eleven damage suits are pending in court.

Twenty-four cases have been settled through court proceedings.

Two hundred and eighty-one families settled direct with the employer.

Skilled railroad employés, in settlement for death

<sup>8</sup> The summary which follows, is taken from statistics prepared by Edwin R. Wright, Secretary of the Commission.

claims, averaged about \$1,000; steel workers, \$874; railroad laborers, \$617; skilled building tradesmen, \$348; skilled electric railway employés, \$310; unclassified workmen, \$311; miscellaneous trades, \$292; packing-house employés, \$234; general laborers, \$154; mine workers, \$155; electric railway laborers, \$75; teamsters, none; building laborers, none.

A further summary may be offered. Of every 100 industrial accidents, 15 go to court—7 are lost and 8 are won. Ninety-two injuries out of every one hundred receive no compensation. This includes both fatal and non-fatal accidents.

Another interesting feature is this: A thorough search through the record reveals 53 fatal cases of recent date. In fatal cases the usual defenses of the employer—the fellow-servant doctrine, assumption of the risk, etc.—did not apply or there would not have been a recovery at all.

For these—the very pick of industrial cases—the average recovery for death was only \$1,877.36. Of this an average amount of \$750.95 was paid to attorneys or expended in court fees, etc., leaving an actual payment of \$1,126.41 to the family of the dead worker. Thirty-four widows were compelled to seek employment and 65 children left school to help keep the wolf from the door.

§ 41. **Ohio statistics.**—The following table shows the results of investigations of the economic effects of industrial accidents on workingmen and their dependents, for the period of 1905-1910, in Cuyahoga county (Cleveland), Ohio, prepared under the direction of the author for the Ohio legislature.<sup>9</sup>

<sup>9</sup> See Report of the Employers' Liability Commission of Ohio, Pt. I, pp. XXXV-XLIV.

TABLE SHOWING PER CENT RECEIVING SETTLEMENT IN FATAL CASES.

Civil status of decedent.	Number of cases taken from coroner's records.	No. receiving settlement through probate court.	No. settling without going to probate court.	No. securing awards in court of common pleas.	Per cent. securing settlement.	Per cent. not securing settlement.
Married -----	115	37	10	1	41.7	58.3
Single -----	60	14	--	1	25.0	75.0
Total -----	175	51	10	2	36.0	64.0

A settlement was made with the dependents in 36 per cent of all the cases, and in 42 per cent of those in which the decedent left a widow. In practically all of these cases an amicable settlement was made with the representative of the deceased, appointed by the probate court, either out of court in the first instance or after the institution of a suit.

§ 42. **Average amount received in settlement in Ohio under old system.**—An examination of 285 fatal cases proved that the average amount paid per case was \$838.61. In 176 of these cases the decedent left a widow, and the average settlement was \$1,056. The exact figures are given in the following table:

TABLE SHOWING AVERAGE AMOUNT RECEIVED IN DEATH CASES.

Civil status of decedent.	Number of cases.	Average amount received.
Married -----	176	\$1,056.51
Single -----	109	485.87
Total -----	285	\$ 838.61

The amount received varied from funeral expenses to \$5,000. In the case of the dependents of 109 single

workingmen killed, the average amount received was \$485.87.

TABLE SHOWING AVERAGE AMOUNT OF SETTLEMENT OF FATAL CASES WITHIN SPECIFIED LIMITS, AS DISCLOSED BY COURT RECORDS.

Range of amount of settlement.	Court in which settlement was made.	No. of cases.	Average amount of settlement.
Up to \$300	Common pleas court	15	\$ 178.93
	United States circuit court	4	187.50
	Probate court	116	161.05
	Total	135	\$ 163.83
\$300 to \$1,000	Common pleas court	14	\$ 542.85
	United States circuit court	10	587.54
	Probate court	83	507.78
	Total	107	\$ 519.81
\$1,000 to \$2,000	Common pleas court	8	\$1,231.25
	United States circuit court	14	1,290.00
	Probate court	49	1,270.59
	Total	71	\$1,269.98
\$2,000 to \$4,000	Common pleas court	6	\$2,241.67
	United States circuit court	7	2,364.28
	Probate court	29	2,704.13
	Total	42	\$2,581.13
\$4,000 and over	Common pleas court	1	\$4,500.00
	United States circuit court	6	5,419.17
	Probate court	8	4,687.74
	Total	15	\$4,991.66
	Total in common pleas court	45	\$ 915.20
	Total in United States circuit court	40	1,775.26
	Total in probate court	285	838.61
	Total	370	\$ 949.19

These conclusions are deduced from this table.

First. That the total amount of compensation received by the dependents of 313 workingmen out of a total number of 370 killed (or 87.86 per cent) of those receiving settlement is \$165,905.35, which is only 47.81 per cent of the total amount, \$351,200.35, paid to the dependents of the 370 workingmen killed; that the total amount of compensation received by the dependents of 57 of these 370 workingmen killed (or 12.14 per cent of those receiving settlement) is \$183,295, which is 52.19 per cent of the total amount paid the dependents of the 370 workers.

Second. That on the average in Ohio, taking the best 15 cases out of the 370 families left dependent by death of the breadwinners, receive on the average \$4,991.66. Deducting now (see next section) 25 per cent for attorney fees and \$300 for doctors' bills, funeral expenses, and interest due to delays in making settlements (assuming that the largest damages are paid to the earners of the largest wages), we have \$3,443.75 as the maximum compensation paid under the present system on an average for each of the best 4 cases out of 100 families left dependent when the head of the family is killed in industrial employment. The obligatory industrial insurance act passed by both houses of the Legislature of Ohio in May, 1911, provides a maximum of \$3,400 and a minimum of \$1,500, and doctors' bills and hospital expenses not to exceed \$200 in all cases.

§ 43. **Attorney fees under old system in Ohio.**—It was intended to give in the following table an accurate idea of what per cent. of the amount of settlement is retained by the plaintiff's attorney as remuneration for his services. Specific amounts were ascertained in so few cases however that the table as given will be misleading unless taken with a few grains of allowance. The great majority of the cases included in it were settled either out of court or before going to trial. The aver-

age for these cases is shown to be about 24 per cent. and this includes both fatal and non-fatal cases.

The table shows that approximately one-fourth of the amount received was paid out as plaintiffs' attorney fees and as court costs.

TABLE SHOWING ATTORNEY FEES UNDER OLD SYSTEM IN OHIO.

Court.	Number of cases in which amount of fees was ascer- tained.	Total amount of settlement.	Total amount of attorney's fees.	Per cent.
Common pleas -----	53	\$78,500	\$20,650.82	26.3
United States circuit court--	13	56,850	14,100.00	24.6
Probate Court -----	88	97,862	19,918.73	20.3

§ 44. Social and economic results of accidents.—An individual investigation to determine the social and economic conditions of families deprived by industry of their breadwinners was made in 86 cases. The results, as compiled in the following table, show that nearly 56 per cent. of the widows were compelled to go to work, and at an average weekly wage of \$5.51. Altogether in these homes there were 178 children, about 70 per cent. of whom were under twelve years; 59 per cent. of the others were forced to go to work. The wretched condition in which some of these families were found can not be depicted by means of tables.

TABLE SHOWING SOCIAL AND ECONOMIC CONDITIONS OF WIDOWS AND CHILDREN.  
WIDOWS.

	Number.	Number compelled to go to work.	Per cent. of those visited.	No. compelled to work whose wages were ascertained.	Per cent. of those who worked.	Averaged weekly wages.
Widow's homes visited..	86	48	55.8	38	79.2	\$5.51

## CHILDREN.

Ages.	Number.	Number to go to work.		
		Per cent.		
Under 12 -----	124	--		00
12 to 18 -----	45	27	or	60
18 to 21 -----	9	5	or	55
Total -----	178	32		--

Fifty-six per cent. of the widows visited and 18 per cent. of the children were forced to go to work to earn a livelihood as a result of the industrial accidents.

§ 45. **Liability insurance statistics in Ohio.**—In making settlements of 65,800 accidents covering a period of about eight years, in Cleveland, Ohio, the Aetna Liability Insurance Co. made payments of any kind in only 6 per cent. of the cases.<sup>10</sup>

§ 46. **German statistics analyzed.**—In 1887 there were insured in Germany 3,861,560 workingmen among 319,453 establishments, and the number of notices of accidents was 106,001. The German analysis of the 15,970 accidents which incapacitated workmen for more than 13 weeks shows:

That 19.76 per cent. of the 15,970 or 3,156 injuries, were attributable to the fault of the employers. That 25.64 per cent. of the 15,970, or 4,094 injuries, were attributable to the fault of the injured. That 54.60 per cent. of the 15,970, or 8,720 injuries, were attributable to the combined fault of the injured and employer, and inevitable risk when at work.<sup>11</sup> Thus 80.24 per cent. of 15,970, or 12,814 injuries were attributable to the fault of the employé and the inherent dangers of the industry. Now, 18.51 per cent. of these 12,814 were killed, 2,372; 17.70 per cent. of these 12,814 were totally disabled,

<sup>10</sup> See Report of Ohio Employers' Liability Commission, Pt. II, p. 208.

<sup>11</sup> Fourth Special Report of the Commission of Labor, 1893, p. 83. See also Table following page.



2,268; 50.88 per cent. of these 12,814 were partly disabled, 6,520.

# CAUSES OF ACCIDENTS IN 1887.<sup>12</sup>

Attributable causes.	Per cent.	Number
Fault of employer:		
Insufficient apparatus for protection.....	10.64	1,700
Defective arrangement for carrying on business..	7.03	1,122
Lack of directions or improper ones.....	2.09	334
Total .....	19.76	3,156
Fault of injured:		
Awkwardness or inattention.....	16.49	2,634
Disobedience to orders .....	5.17	825
Heedlessness .....	1.93	316
Failure to make use of protective apparatus.....	1.76	281
Unsuitable clothing .....	.24	38
Total .....	25.64	4,094
Fault of the employed and injured.....	4.45	711
Fault of third person, particularly a co-laborer.....	3.28	524
No fault which can be assigned.....	3.47	554
Inevitable risk when at work.....	43.40	6,931

Of these 12,814, 12.91 per cent. were incapacitated for a time longer than 13 weeks, 1,654.

It follows, therefore, that out of 15,970 employ es whose injuries lasted more than 13 weeks, the common-law remedies would give 3,156 employ es such compensation as a jury would assess after a trial and all appeals were settled.<sup>13</sup> But the common law does not pretend to compensate dependents of the 2,372 killed in these accidents where the cause of death could not be attributed wholly to the fault of the employer. Nor does the common law pretend to compensate the 2,268 injured workmen who were disabled for life, the fault not being attributable to the employer. Nor does the com-

<sup>12</sup> Fourth Special Report of the Commission of Labor, 1893, p. 83.

<sup>13</sup> Schonberg, Hanbuch, Vol. II, XXII, pp. 737-748.

mon law offer any remedy for compensating the 6,520 injured workmen who were partially disabled, the fault thereof not being traceable to the employer.

RESULTS OF ACCIDENTS IN 1887.

Results.	Per cent.	No.
Death -----	18.51	2,956
Incapacity for a time longer than 13 weeks-----	12.91	2,061
Lasting incapacity for work:		
Entire -----	17.70	2,827
Partial -----	50.88	8,126
Total -----	68.58	10,953

§ 47. Classification of causes of accidents in Germany.—A classification of the causes of accidents to 46,000 employés collected by the German imperial insurance office for the year 1907 shows the following results.<sup>14</sup>

1. Due to negligence or fault of employer-----	16.81
2. Due to joint negligence of the employer and injured employé -----	4.66
3. Due to negligence of co-employés (fellow servants)-----	5.28
4. Due to "acts of God"-----	2.31
5. Due to fault or negligence of employé-----	28.89
6. Due to inevitable accidents connected with the employment-----	42.05
Total -----	100.00
These figures grouped to correspond to those for one year, 1887 are:	
1. Cause of accident attributable to employer-----	16.81
2. Cause of accidents attributable to employé-----	28.89
3. Due to the inherent risks of the business-----	54.30
Total -----	100.00

The agricultural laborers were admitted to insurance after 1887, and the act was made to cover a large additional class of less intelligent laborers.

§ 48. Miscellaneous data.—The 19,000,000 workmen who earn on an average less than \$500 per

<sup>14</sup> Bulletin Bureau of Labor, January, 1908.

annum, with their families, represent a population of 60,000,000 people.

Every civilized nation has decided that the product of labor of a given generation must support all during that time.<sup>15</sup>

Looked at from a purely commercial standpoint, that of rearing of men and women for the purpose of productive laborers, the elements of cost and waste have been studied with accurate results.

There is the rearing of the children to the age of self-support, with the result that 13 per cent die during that period; during the assumed productive life of wage earners, it is estimated that the loss from death is 25 per cent in the United States.<sup>16</sup> The loss through sickness is 6 per cent.<sup>17</sup> Then you must add the cost, in money and time, of accidents and the support of the aged.

Under these conditions, it is claimed that the contract of labor through some inadvertence is made as though sickness, accident, invalidity, and old age had been permanently banished from the earth; that the daily wage is sufficient only for daily necessities; that a man entitled to support for a lifetime unwillingly consents to a wage based upon a portion of that lifetime, for the competition in the field of labor is among the strong, the able-bodied, the efficient.<sup>18</sup>

We are surprised when told that Germany's poorer classes, though less favored by circumstances, maintain a higher level of well-being and far higher level of vitality than those of the United States and England.<sup>19</sup>

In industries outside of agriculture, for the sake of

<sup>15</sup> F. A. Walker, *The Wage Question*, p. 34.

<sup>16</sup> F. A. Walker, *Wages*, p. 35.

<sup>17</sup> C. S. Loch, *Insurance and Savings*, p. 50.

<sup>18</sup> A. W. Lewis, *State Insurance*, p. 7.

<sup>19</sup> A. Shodwell, *Industrial Insurance*, Vol. 2, p. 453.

comparison we might take \$600 per annum as a minimum wage, based upon a family of five.<sup>20</sup>

In Massachusetts during a period of great prosperity with the necessary attendant cost of living, out of 300,000 adult workmen, only two-fifths received as much as \$12 per week. Making only proper allowance for unemployment, this would amount to considerably less than \$600 per year.<sup>21</sup> It has been said that the 18,000,000 wage earners of the United States receive an average wage of only \$400 per annum.<sup>22</sup>

It is said that one-half of the families of the country and nine-tenths of those in the cities and industrial communities are propertyless; that in a group of States, including Massachusetts, one-fifth are in poverty;<sup>23</sup> that one-twentieth are paupers;<sup>24</sup> that one-eighth of the families hold seven-eighths and one per cent hold over one-half of the property of the country;<sup>25</sup> and that 71 per cent of the people hold 5 per cent of the wealth;<sup>26</sup> that one-eighth of the families receive over one-half of the total income; and that two-fifths of the better-paid laborers receive more than the remaining three-fifths.<sup>27</sup>

We can derive no comfort from the statistics of savings-bank deposits. Take Massachusetts, where there seems to be an average deposit of about \$300. Investigation shows that, while far the largest number of de-

<sup>20</sup> J. A. Ryan, *A Living Wage*, p. 150.

<sup>21</sup> Compare Massachusetts Labor Bulletin, No. 44, December, 1906, p. 430, with thirty-seventh annual report, 1906, Massachusetts Bureau of Statistics of Labor, pp. 279-281.

<sup>22</sup> Address before American Association for Advancement of Science, December 27, 1906, by H. L. Call.

<sup>23</sup> Hunter, pp. 43-60.

<sup>24</sup> R. T. Ely, in *North American Review*, Vol. 152, p. 398.

<sup>25</sup> C. P. Spahr, *Present Distribution of Wealth in the United States*, p. 69.

<sup>26</sup> G. K. Holmes, in *Political Science Quarterly*, Vol. III, p. 593.

<sup>27</sup> G. K. Holmes, in *Political Science Quarterly*, Vol. III, pp. 128-129.

posits belong to the wage-earning class, the deposits of thirteen-fourteenths of the whole number are but slightly larger than those of the remaining one-fourteenth; that in a typical bank the average deposit of wage-earners was less than \$75.<sup>28</sup>

In England "it took 25 years of legislation to restrict a child of 9 to 69 hours per week."<sup>29</sup> "It took 75 years to ascertain that the factory act, instead of weakening, had strengthened her in the world's rivalry."<sup>30</sup>

The assumption of any function by the State, like that of compulsory public education, is based upon higher grounds than compassion for a class. On what grounds does the State regulate the cholera, bubonic plague, and build and maintain institutions for paupers and for the insane? Why not begin higher up and prevent pauperism and assist those who do work of the nation and must fight its battles, who can not protect themselves from having an eye put out or an arm or leg cut off or their lives crushed out?

The fourth element which enters into the determination of the economic insecurity of workingmen under the modern wage system is the following: While, theoretically, injured workmen have a cause of action at law against their employers in 18.19 per cent. of the cases of injuries to them, we learn further from this table that the per cent of accidents the causes of which are attributable to the combined negligence of the employer and employé is 9.94 per cent, and from the German statistics we learn that the portion of this 9.94 per cent which is due to the negligence of fellow servants is 5.28 per cent. But in the cases which come under the fellow-servant rule the injured workmen can not recover. Sub-

<sup>28</sup> Massachusetts Bureau of Labor Statistics, Third Annual Report, pp. 304-313; Fourth Annual Report, p. 192.

<sup>29</sup> Hutchinson and Harrison, p. 21.

<sup>30</sup> Traill, Social England, Vol. VI, p. 825.

tracting 5.28 per cent from the 18.19 per cent there is left only 12.91 per cent of the cases in which injured workmen can theoretically recover under the common and liability laws for personal injuries received while at work. See table § 47.

§ 49. Statistical results of the per cent. of workmen who receive compensation under the common law and liability laws.—Prior to the adoption of compulsory State insurance in Germany, under the operation of common and liability laws injured workmen received compensation in only 10 per cent. of the cases.<sup>31</sup>

By reference to the preceding tables of results in the different States and making allowance for the rotting of evidence between the time of the accident and that of the trial of the case, the statistics of the practical operation of the workingman's ability to recover compensation in the United States verifies the German statistics that he can theoretically recover in from 6 to 12 per cent. of the cases.

The fifth element which enters into the determination of the "economic insecurity of workmen under the modern wage system" is gathered from the miscellaneous data. The preceding section shows:

(a) That in the rearing of children to the age of self-support 13 per cent die during that period; (b) That in the United States during the assumed productive life of wage earners it is estimated that the loss from death is 25 per cent; (c) That the loss of wages through sickness of workmen is 6 per cent., saying nothing about the cost of supporting the aged, etc.

Lastly, there is still the very important sixth element of the said insecurity—that is, the average compensa-

<sup>31</sup> Fourth Special Report of Commissioner Wright, 1893.

tion received by the dependents of a workman killed while at work under the present wage system.

Take the most favorable cases, called court cases; for example, in the Ohio table in a preceding section.<sup>33</sup> The average compensation received by the family of the worker in fatal cases is \$949. Deducting 25 per cent for attorney fees and \$212 for funeral expenses and the costs of delay of settlement, and you have a net compensation of \$500. Under the Ohio law, just passed, the workman receiving the average wages of \$12 per week would receive \$2,400.<sup>34</sup> Thus the small per cent who receive any compensation under the present wage system receive on the average about one-fifth of what is regarded as a reasonably adequate compensation.

**§ 50. Fundamental economic conclusions.**—The foregoing statistical studies show conclusively that (and to what extent) the social and economic order of the people of the United States is gravely threatened in the permanency of its security by the economic insecurity of the workingmen which accompanies the modern wage system under the operation of the prevailing common and liability laws through which workingmen must seek compensation when they are injured in the due course of their employment.

Further, it should be said that the ultimate object of compulsory State insurance for workingmen is to conserve the normal capacity of the average worker of all the classes of workingmen and to maintain the same at the highest possible efficiency.

<sup>33</sup> See § 41.

<sup>34</sup> In the opinion of the writer the scientific and economic value to society of the statistical results which are set forth in Section 36 are, of all the economic statistics known to the writer, of the greatest importance; and that the conclusions derived by means thereof are new discoveries in the field of political economy.

**§ 51. Remedies proposed—German and English plans.**—The German plan of insurance against accidents had paid out \$802,000,000 during the last 20 years ending in 1904. Of this total sum \$555,750,000 was paid on account of sick insurance, \$232,750,000 on account of accidents, and \$13,500,000 on account of invalidism and old age.

To the fund necessary to make these payments the employer contributed \$424,500,000. The employés contributed \$377,000,000 and the Imperial Government paid a portion of the cost of administration and a small portion of the funds necessary to take care of invalidism and old age (50 marks in each case insured).

The general rules are, in respect to the raising of the insurance fund, that the employés should pay two-thirds of the fund necessary to take care of sick insurance, which lasts for 13 weeks, and the employers pay one-third. In the case of accident insurance the employers pay about 85 per cent. and the employés 15 per cent. In the case of invalidism and old-age insurance the Imperial Government pays \$12.50 for each person insured, and the remainder of the fund is paid half and half by the employers and employés.

The German plan in 1907 had 27,172,000 workingmen insured against sickness, accidents, and old age out of a population of 62,000,000 people.

Now, briefly, the English plan, which in 1908 had 13,000,000 workingmen insured, is the following:

In case of death, the compensation paid is at most three years' wages, at £300, or \$1,460, with a minimum payment of three years' wages at £150, or \$730. In case of disability which lasts longer than one week the compensation paid is one-half week's average wage, not to exceed \$4.87, as long as the disability lasts. Responsibility for the payment of the compensation rests solely on the employers, and they are not required to insure.



In both the German and English plans the rules of contributory negligence, assumption of risk, and the fellow-servant rules are abolished, and the only kind of negligence recognized is that of malicious negligence on the part of the employer or employé.

Now, the common law does not presume to furnish a plan of relief except where it can be proven that the defendant is at fault; therefore the common law does not presume to furnish any relief for something like 80 per cent of all workingmen injured and killed in the United States, and the lowest estimate of the number of persons injured and killed in the industrial accidents in 1909 is 536,000 people.

In the battle of Gettysburg, which lasted three days in actual fighting, there were killed and wounded and missing 43,500 soldiers, and if, therefore, you were to have a battle of Gettysburg in one of each of 12 divisions of the United States, one in one month, say, in the neighborhood of Boston, and the next month in the neighborhood of New York City, a third at Washington, a fourth at New Orleans, a fifth at Cincinnati, one at Pittsburgh, a seventh at Chicago, one at St. Louis, one in Minneapolis, one in Denver, one at Portland, Ore., and wind up at the end of the year at San Francisco, you would not create quite the damage and destruction which takes place in the conduct of our industries for one year; yet the common law does not pretend to furnish any relief or remedy, except in those cases in which the employer is negligent, and the best figures indicate that it does not exceed 20 per cent of all injuries, and even the part of that relief which reaches the employés is less than one-fifth of what the employers pay out to protect themselves against the liability arising out of injuries to workingmen in industrial accidents.

§ 52. **Specific provision against the economic insecurity of workingmen in the United States.**—Legislative agents and those best informed on the subject of compensating the workingmen injured in the due course of their employment agree that the most just and efficient remedy is that known as industrial insurance along the lines of the German plan, or a workman's compensation act along the lines of the British act.

Perhaps the most concrete illustration of the adaptation of the German plan of industrial insurance to the compensation of injured workmen now in operation in the United States is the Ohio workman's compensation act. The following statistical data is taken from the report of the experts for the Ohio commission which was prepared by Emile E. Watson, investigator in chief.<sup>35</sup> The facts and the Ohio law are fairly typical of the conditions and the proposed remedies in respect to industrial insurance as they exist today in the United States. They are of the highest scientific importance. The results are briefly summarized in the following paragraphs:<sup>36</sup>

1. (a) Under the old system the Ohio workman who was killed while at his employment got an average settlement of  $\$958 \times 36 \div 100$ , or \$344.88.

(b) Under the new workmen's compensation plan he will receive an average settlement of \$2,444.

2. (a) Under the former system the widow and the children of the injured are obliged to pay 24 per cent of this \$344.88 to lawyers and to the courts. (b) Under the workmen's compensation plan they will receive all the \$2,444, not having to pay a penny for attorney or court costs.

3. (a) Under the old system only 36 per cent of

<sup>35</sup> Report of the Employers' Liability Commission of Ohio, Pt. I, p. XXXV.

<sup>36</sup> See tables in §§ 41-45.

those workingmen who were killed while at their work received anything at all, leaving 64 per cent absolutely without compensation. (b) Under the workmen's compensation plan every workingman killed, not by his own wilful carelessness, or in other words, by suicide, will receive full compensation, meaning that from 80 to 95 per cent are to receive compensation.

4. (a) Under the old system, of this 36 per cent who actually received anything at all 60 per cent got somewhere between \$50 and \$500, and 12 per cent of those injured got more than 50 per cent of the total amount that was paid out for injuries. (b) Under the new system not only will the 80 to 95 per cent receive on an average of \$2,444 each, but the difference in wages; for instance, where the workman receives a wage of \$2 a day and is killed, his widow and children will receive a compensation of \$2,444, whereas the widow and children of the workman who receives \$3 a day will get \$3,400.

5. (a) Under the old system, where the workman was killed the widow and children of the 36 per cent who got anything at all had to wait from one to five years before they got it, in which period the widow buried her husband, the wages of the husband stopped coming in on Saturday night, and the mother was forced from her home to the washtub, or the scrub rag, and part of the children were taken from school to live a life of slavery and drudgery; they were forced to live in hovels because rent was cheap there, and in this way tuberculosis and other diseases were contracted. (b) Under the workmen's compensation plan there is no delay whatever—the \$2,444 (the average compensation received) being paid at once. As a rule this amount is not to be paid in a lump sum, but in the same manner as the husband received his regular weekly wage. In this way the widow will not be forced to lower the standard of living for herself and her children, and she will be

shielded from the washtub and the scrub rag and be enabled to keep her children in school until she has educated them.

6. (a) The old system results in 56 per cent of the widows and 18 per cent of the children of the injured workman going to work in order to earn a livelihood, because of the great mass who receive nothing and because of the court delay and costs involved to those who actually do receive something. (b) The workmen's compensation plan will result in not more than 10 per cent of the mothers and 4 per cent of the children going to work as a result of the death of the breadwinner, because there will be from 80 to 95 per cent who will receive compensation of a uniform nature—an average compensation of \$2,444—without any costs and without any delay in securing the same.

Every employer covered by the act, who fails to come under this workmen's compensation plan is denied the protection of the fellow-servant, contributory negligence, and assumed risk doctrines.

The employé who is working under an employer who has come under the compensation plan is required to accept terms of settlement as prescribed by the compensation plan.

The State is made custodian of a fund which is created for the purpose of taking care of all claims which arise under the workmen's compensation plan. The employer contributes ninety and the employé ten per cent. of this fund.

**§ 53. Argument for joint contribution by employer and employé.**—The argument for making both employer and employé a party to this fund is that both parties may stand in vital relation to it, every employer will take it as his business to force the careless employer to most carefully protect his men because to the extent

that accidents are increased or diminished his premium is increased or diminished; likewise the employé, being a party to this fund, makes it his business to whip his fellow-workingmen into exercising care, because to the degree that the workingman is careless his premium is increased.

Broadly speaking, the end sought to be attained by all constitutions, statutes and court decisions is the correction of economic inequalities which arise during the process of the evolution of organized society.<sup>37</sup>

<sup>37</sup> That these new remedies do no violence to existing constitutions is well shown by Mr. Justice Marshall in his concurring opinion in the case of *Borgnis v. Falk Co.*, 147 Wisconsin 327, 133 N. W. 224-5, which sustained the constitutionality of the Wisconsin act. He says:

"So, in short, I think the law in question is a reasonably appropriate means to effect a constitutional purpose; that the Constitution needs no bending whatever in order to sustain it in its essential features, and none would be proper if the contrary were the case.

"The foregoing I can but regard out of harmony with this, in its letter: 'Changed social, economic and governmental conditions and ideals of the time, as well as the problems the changes have produced, must largely enter into the consideration and become influential factors in the settlement of problems of construction and interpretation'—so far as it is pregnant with the thought that the fundamental law is judicially changeable. The words 'problems' of 'construction' and 'interpretation' I think were unfortunately used, if the thought was merely of problems of whether new enactments to cope with new conditions are within or without the legitimate field of legislative activity, having regard to appropriateness of means to effect a constitutional end. The latter might be, as I have suggested, at one time and not a half century theretofore, because changed conditions may render an end legitimate, within the unchangeable scope of the fundamental law, which earlier was not, or the selected means to effect that end might be reasonably appropriate at one time, though not so a century, more or less, theretofore. \* \* \*

"True, the old remedies for losses mentioned have been inefficient and wasteful. They are, economically speaking, unscientific and have always been. It is more apparent now than formerly by reason of greater and more numerous modern activities and methods, that is all. In truth, the infirmity from an economic standpoint, and from the standpoint of man's duty to his fellowmen, has always existed, though the quantum of regrettable results and useless waste has

greatly increased by the multiplication of human activities and physical instrumentalities.

"So it will be seen, I think, that while particular means may be reasonably appropriate to a legitimate purpose under some conditions characterizing a particular period, and not have been at a prior time, no change in the Constitution is involved in remedying the misfit. The end being proper the legitimacy of means may be dependable upon conditions, the question turning more on matter of fact than anything else. The change of mere means does not require a fundamental change, so long as legitimacy of end and reasonable appropriateness of means shall be kept efficiently in view."

## CHAPTER VI.

### THE NEW YORK WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
54. New York law first construed.	58. Argument for constitutionality of act.
55. Nature and scope of the New York act.	59. Reasons for upholding view of court.
56. Text of the New York statute—Labor Law art. 14a.	59a. New York General Liability Law with compensation features.
57. Construction of the law by the Court of Appeals.	

§ 54. **New York law first construed.**—The New York law is the first of the compensation laws to receive a construction by a court of last resort in this country.<sup>1</sup> The Montana law was first enacted, but its construction by the supreme court of that state was not announced until after the court of appeals of New York had spoken.

§ 55. **Nature and scope of the New York act.**—This statute made it compulsory on the part of the employer to pay the prescribed compensations to all workmen who should receive injuries while in the due course of their employment in any of eight specified hazardous occupations. But the employés engaged in these occupations were given the option of accepting the limited and classified compensations provided or to sue at law as they might have done prior to the passage of the act. The law recognizes no negligence on the part of the employés accepting such as is due to "the serious and wilful misconduct of the workmen." It was passed by the Legislature in 1910 and declared unconstitutional by the court of appeals on March 24th, 1911.<sup>2</sup>

<sup>1</sup> *Ives v. South Buffalo Railway Co.*, 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 161 n.

<sup>2</sup> *Ives v. South Buffalo Railway Co.*, 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162 n.

**§ 56. Text of the New York statute—Labor Law article 14a.**

Section 215. Application of article.—This article shall apply only to workmen engaged in manual or mechanical labor in the following employments, each of which is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

1. The erection or demolition of any bridge or building in which there is, or in which the plans and specifications require, iron or steel framework.

2. The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of materials in connection with the erection or demolition of such bridge or building.

3. Work on scaffolds of any kind elevated twenty feet or more above the ground, water, or floor beneath in the erection, construction, painting, alteration or repair of building, bridges or structures.

4. Construction, operation, alteration or repair of wires, cables, switchboards or apparatus charged with electric currents.

5. All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry.

6. The operation on steam railroads of locomotives, engines, trains, motors or cars propelled by gravity or steam, electricity or other mechanical power, or the construction or repair of steam railroad tracks and road beds over which such locomotives, engines, trains, motors or cars are operated.



7. The construction of tunnels and subways.

8. All work carried on under compressed air.

Section 216. Definitions—The words, “employer,” “workman” and “employment,” or their plurals, used in this article, shall be construed to apply to all the employments above described.

Section 217. Basis of liability.—If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment after this article takes effect is caused to any workman employed therein, in whole or in part, or the damage or injury caused thereby is in whole or in part contributed to by

a. A necessary risk or danger of the employment or one inherent in the nature thereof; or

b. Failure of the employer of such workmen or any of his or its officers, agents or employés to exercise due care, or to comply with any law affecting such employment; then such employer shall, subject as hereinafter mentioned, be liable to pay compensation at the rates set out in section two hundred and nineteen-a of this title; provided that the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed, and provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and wilful misconduct of the workman.

Section 218. Rights of action not affected.—The right of action for damages caused by any such injury, at common law or under any statute in force on January one, nineteen hundred and ten, shall not be affected by this article, and every existing right of action for negligence or to recover damages for injuries resulting in death is continued, and nothing in this article shall be

construed as limiting such right of action, but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this article, either by accepting any compensation hereunder in accordance with section two hundred and nineteen-a hereof, or by beginning proceedings therefor in any manner on account of any such injury, he shall be barred from recovery in and deemed thereby to have released every other action at common law or under any other statute on account of the same injury after this article takes effect. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this article against the employer therefor he shall be barred from all benefit of this article in regard thereto.

Section 219. Notice of accident.—No proceedings for compensation under this article shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and during such disability, but no want or defect or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall state the name and address of the workman injured, the date and place of the accident, and in simple language the physical cause thereof, if known. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business.

Section 219-a. Scale of compensation.—The amount of compensation shall be in case death results from injury:

- a. If the workman leaves a widow or next of kin at

the time of his death wholly dependent on his earnings, a sum equal to twelve hundred times the daily earnings of such workman at the rate at which he was being paid by such employer at the time of the injury subject as hereinafter provided, and in no event more than three thousand dollars. Any weekly payments made under this article shall be deducted in ascertaining such amount.

b. If such widow or next of kin at the time of his death are in part only dependent upon his earnings, such proportionate sum not exceeding that provided in subdivision a as may be determined according to the injury to such dependents.

c. If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars.

Whatever sum may be determined to be payable under this article in case of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

2. Where total or partial incapacity for work at any gainful employment results to the workman from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, equal to fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been in the employment of the same employer for less than a year, then a weekly payment of not exceeding three times the average daily earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earn-

ings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this article exceed the damage suffered, nor shall any weekly payment payable under this article in any event exceed ten dollars a week or extend over more than eight years from the date of the accident.

Section 219b. Medical examinations.—Any workman entitled to receive weekly payments under this article is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Section 219c. Incompetency of workman.—In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this article, a committee or guardian of the incompetent appointed pursuant to law may, on behalf of such

incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time in this article provided for shall run so long as said incompetent workman has no committee or guardian.

Section 219d. Settlement of disputes.—Any question which may arise under this act shall be determined either by agreement or by arbitration as provided in the Code of Civil Procedure or by an action at law as herein provided. In case the employer fails to make compensation as herein provided, the injured workman, or his committee or guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this article in any court having jurisdiction thereof, or in any court which would have had jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. This article, however, shall not be construed as extending the jurisdiction of any such court to award judgment for an amount greater than now allowed by law. Such action shall be conducted in the same manner as actions at law for the recovery of damages for negligence. The judgment in such action if in favor of the plaintiff shall be for a sum equal to the amount of payments then due and prospectively due under this article. Such action must be commenced within six months after the happening of the accident or in case of the death of the workman by such accident within six months after the appointment of his legal representative in this state, or in the event of his physical incapacity, within six months after the removal thereof, or in the event of weekly payments by the employer hereunder, within six months after such payments have ceased. In such action by an executor or administrator the judgment may provide the propor-

tions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the surrogate's court, in which such executor or administrator is appointed, in accordance with this article, on petition of any party interested on such notice as such court may direct.

**Section 219-e. Preferences and exemptions.**—Any person entitled to weekly payments under this article against any employer shall have the same preferential claim therefor against the assets of the employer as allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this article shall not be assignable or subject to levy, execution or attachment.

**Section 219-f. Attorneys' liens.**—No claim of an attorney at law for any contingent interest in any recovery under this article for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the amount of the same be approved in writing by a justice of the Supreme Court, or in case the same be tried in any court, by the justice presiding at such trial.

**Section 219-g. Liability of principal contractors.**—If an employer who shall be the principal enters into a contract with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's contract with the employer, the said principal shall be liable to pay to any workman employed in the execution of the work any compensation under this article which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal then, in the application of this article, ref-

ferences to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the contractor or employer by whom he is immediately employed. Where such principal is liable to pay compensation he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section. Nothing in this section shall be construed as preventing a workman from recovering compensation under this article from the contractor or sub-contractor, instead of the principal; nor shall this section apply in any case where the accident shall occur elsewhere than on, or in, or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

**§ 57. Construction of the law by the Court of Appeals.**—The statute was declared unconstitutional by the Court of Appeals in the case, *Ives v. South Buffalo Railway Company*.<sup>3</sup> This case came to the court on appeal from a judgment of the Appellate Division of the Supreme Court, in the fourth department, which affirmed a final judgment in favor of the plaintiff entered upon a decision at Special Term sustaining a demurrer to the defenses pleaded in the answer.

The complaint alleges, in substance, that on the second day of April, 1910, while the plaintiff was engaged in his work as a switchman on defendant's steam railroad, he was injured solely by reason of a necessary risk or danger of his employment; that at the time of the commencement of the action he had been totally incapacitated for labor for a period of three weeks, and that such incapacity would continue for four weeks

<sup>3</sup> 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162 n.

longer and demands judgment for compensation in accordance with the provisions of said act for a period of five weeks. The answer, after admitting all the allegations of the complaint, pleaded as a defense the unconstitutionality of article 14-a of the Labor Law, upon the ground that it contravenes certain provisions of the Federal and State Constitutions. The plaintiff demurred to this defense on the ground that it was insufficient in law upon the face thereof. The issue of law thus presented was tried at Special Term, where the demurrer was sustained. Final judgment was entered upon this decision, and the defendant appealed to the Appellate Division, where the judgment was affirmed by a divided court.

The opinion by Mr. Justice Werner is as follows: In 1909 the legislature passed a law (Ch. 518) providing for a commission of fourteen persons, six of whom were to be appointed by the governor, three by the president of the senate from the senate, and five by the speaker of the assembly from the assembly, "to make inquiry, examination and investigation into the working of the law in the State of New York relative to the liability of employers to employés for industrial accidents, and into the comparative efficiency, cost, justice, merits and defects of the laws of other industrial states and countries, relative to the same subject, and as to the causes of the accidents to employés." The act contained other provisions germane to the subject and provided for a full and final report to the legislature of 1910, if practicable, and if not practicable, then to the legislature of 1911, with such recommendations for legislation by bill or otherwise as the commission might deem wise or expedient. Such a commission was appointed and promptly organized by the election of officers and the appointment of sub-committees, the chairman being Senator Wainwright, from whom it has tak-



en the name of the "Wainwright Commission," by which it is popularly known. No word of praise could overstate the industry and intelligence of this commission in dealing with a subject of such manifold ramifications and of such far-reaching importance to the state, to employers and to employés. We cannot dwell in detail upon the many excellent features of its comprehensive report, because the limitations of time and space must necessarily confine us to such of its aspects as have a necessary relation to the legal questions which we are called upon to decide. As the result of its labors the commission recommended for adoption the bill which, with slight changes, was enacted into law by the legislature of 1910, under the designation of article 14-a of the Labor Law. This act is modeled upon the English Workmen's Compensation Act of 1897, which has since been extended so as to cover every kind of occupational injury. Our commission has frankly stated in its report that the classification of the industries which will be immediately affected by the present statute is only tentative, and that other more extended classifications will probably be recommended to the legislature for its action.

The statute, judged by our common-law standards, is plainly revolutionary. Its central and controlling feature is that every employer who is engaged in any of the classified industries shall be liable for any injury to a workman arising out of and in the course of the employment by "a necessary risk or danger of the employment or one inherent in the nature thereof; \* \* \* provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and wilful misconduct of the workman." This rule of liability, stated in another form, is that the employer is responsible to the employé for every accident in the course of the employ-

ment, whether the employer is at fault or not, and whether the employé is at fault or not, except when the fault of the employé is so grave as to constitute serious and willful misconduct on his part. The radical character of this legislation is at once revealed by contrasting it with the rule of the common law, under which the employer is liable for injuries to his employé only when the employer is guilty of some act or acts of negligence which caused the occurrence out of which the injuries arise, and then only when the employé is shown to be free from any negligence which contributes to the occurrence. The several judicial and statutory modifications of this broad rule of the common law we shall further on have occasion to mention. Just now our purpose is to present in sharp juxtaposition the fundamentals of these two opposing rules, namely, that under the common law an employer is liable to his injured employé only when the employer is at fault and the employé is free from fault; while under the new statute the employer is liable, although not at fault, even when the employé is at fault, unless this latter fault amounts to serious and wilful misconduct. The reasons for this departure from our long-established law and usage are summarized in the language of the commission as follows:

"First, that the present system in New York rests on a basis that is economically unwise and unfair, and that in operation it is wasteful, uncertain and productive of antagonism between workmen and employers.

"Second, that it is satisfactory to none and tolerable only to those employers and workmen who practically disregard their legal rights and obligations, and fairly share the burden of accidents in industries.

"Third, that the evils of the system are most marked in hazardous employments, where the trade risk is high and serious accidents frequent.

"Fourth, that, as matter of fact, workmen in the

dangerous trades do not, and practically cannot, provide for themselves adequate accident insurance, and, therefore, the burden of serious accidents falls on the workmen least able to bear it, and brings many of them and their families to want."

This indictment of the old system is followed by a statement of the anticipated benefits under the new statute as follows: "These results can, we think, be best avoided by compelling the employer to share the accident burden in intrinsically dangerous trades, since by fixing the price of his product the shock of the accident may be borne by the community. In those employments which have not so great an element of danger, in which, speaking generally, there is no such imperative demand for the exercise of the police power of the state for the safeguarding of its workers from destitution and its consequences, we recommend, as the first step in this change of system, such amendment of the present law as will do away with some of its unfairness in theory and practice, and increase the workman's chance of recovery under the law. With such changes in the law we couple an elective plan of compensation which, if generally adopted, will do away with many of the evils of the present system. Its adoption will, we believe, be profitable to both employer and employé, and prove to be the simplest way for the State to change its system of liability without disturbance of industrial conditions. Not the least of the motives moving us is the hope that by these means a source of antagonism between employer and employed, pregnant with danger for the State, may be eliminated."

This quoted summary of the report of the commission to the legislature, which clearly and fairly epitomizes what is more fully set forth in the body of the report, is based upon a most voluminous array of statistical tables, extracts from the works of philosophical

writers and the industrial laws of many countries, all of which are designed to show that our own system of dealing with industrial accidents is economically, morally and legally unsound. Under our form of government, however, courts must regard all economic, philosophical and moral theories, attractive and desirable though they may be, as subordinate to the primary question whether they can be moulded into statutes without infringing upon the letter or spirit of our written constitutions. In that respect we are unlike any of the countries whose industrial laws are referred to as models for our guidance. Practically all of these countries are so-called constitutional monarchies in which, as in England, there is no written constitution, and the Parliament or law-making body is supreme. In our country the Federal and State Constitutions are the charters which demark the extent and the limitations of legislative power; and while it is true that the rigidity of a written constitution may at times prove to be a hindrance to the march of progress, yet more often its stability protects the people against the frequent and violent fluctuations of that which, for want of a better name, we call public opinion.

With these considerations in mind we turn to the purely legal phases of the controversy for the purpose of disposing of some things which are incidental to the main question. The new statute, as we have observed, is totally at variance with the common-law theory of the employer's liability. Fault on his part is no longer an element of the employé's right of action. This change necessarily and logically carries with it the abrogation of the "fellow-servant" doctrine, the "contributory negligence" rule, and the law relating to the employé's assumption of risks. There can be no doubt that the first two of these are subjects clearly and fully within the scope of the legislative power; and that as to the third,

this power is limited to some extent by constitutional provisions.

The "fellow-servant" rule is one of judicial origin engrafted upon the common law for the protection of the master against the consequences of negligence in which he has no part. In its early application to simple industrial conditions it had the support of both reason and justice. By degrees it was extended until it became evident that under the enormous expansion and infinite complexity of our modern industrial conditions the rule gave opportunity, in many instances, for harsh and technical defenses. In recent years it has been much restricted in its application to large corporate and industrial enterprises, and still more recently it has been modified and, to some extent abolished, by the Labor Law and the Employers' Liability Act.

The law of contributory negligence has the support of reason in any system of jurisprudence in which the fault of one is the basis of liability for injury to another. Under such a system it is at least logical to hold that one who is himself to blame for his injuries should not be permitted to entail the consequences upon another who has not been negligent at all, or whose negligence would not have caused the injury if the one injured had been free from fault. It may be admitted that the reason of the rule is often lost sight of in the effort to apply it to a great variety of practical conditions, and that its efficacy as a rule of justice is much impaired by the lack of uniformity in its administration. In the admiralty branch of the Federal courts, for instance, we have what is known as the rule of comparative negligence under which, when there is negligence on both sides, it is apportioned and a verdict rendered accordingly. In many of the states contributory negligence is a defense which must be pleaded and proved by the defendant, and in some states it has been entirely abrogated by

statute. In our own state the plaintiff's freedom from contributory negligence is an essential part of his cause of action which must be affirmatively established by him, except in cases brought by employés under the Labor Law, by virtue of which the contributory negligence of an employé is now made a defense which must be pleaded and proved by the employer; and under the Employers' Liability Act which provides that the employé's continuance in his employment after he has knowledge of dangerous conditions from which injury may ensue, shall not, as matter of law, constitute contributory negligence.

Under the common law the employé was also held to have assumed the ordinary and obvious risks incident to the employment, as well as the special risks arising out of dangerous conditions which were known and appreciated by him. This doctrine, too, has been modified by statute so that under the Labor Law and the Employers' Liability Act the employé is presumed to have assented to the necessary risks of the occupation or employment and no others; and these necessary risks are defined as those only which are inherent in the nature of the business and exist after the employer has exercised due care in providing for the safety of his employés, and has complied with the laws affecting or regulating the business or occupation for the greater safety of employés.

We have said enough to show that the statutory modification of the "fellow-servant" rule and the law of "contributory negligence" are clearly within the legislative power. These doctrines, for they are nothing more, may be regulated or even abolished. This is true to a limited extent as to the assumption of risk by the employé. In the Labor Law and the Employers' Liability Act, which define the risks assumed by the employé, there are many provisions which cast upon the em-

ployer a great variety of duties and burdens unknown to the common law. These can doubtless be still further multiplied and extended to the point where they deprive the employer of rights guaranteed to him by our Constitutions, and there, of course, they must stop, as we shall endeavor to demonstrate later on.

Passing now to the constitutional objections which are presented against the new statute, we will first eliminate those which we regard as clearly or probably untenable. The appellant argues and the respondent admits that the new statute cannot be upheld under the reserved power of the legislature to alter and amend charters. It is true that the defendant in the case at bar is a railroad corporation, but the act applies to eight enumerated occupations or industries without regard to the character of the employers. They may be corporations, firms or individuals. Nowhere in the act is there any reference to corporations. The liability sought to be imposed is based upon the nature of the employment and not upon the legal status of the employer. It is, therefore, unnecessary to decide how far corporate liability may be extended under the reserved power to alter or amend charters, except as that question may be incidentally discussed in considering the police power of the state.

The appellant contends that the classification in this statute, of a limited number of employments as dangerous, is fanciful or arbitrary, and is, therefore, repugnant to that part of the fourteenth amendment to the Federal Constitution which guarantees to all our citizens the equal protection of the laws. Classification, for purposes of taxation, or of regulation under the police power, is a legislative function with which the courts have no right to interfere unless it is so clearly arbitrary or unreasonable as to invade some constitutional right. A state may classify persons and objects for the purpose

of legislation provided the classification is based on proper and justifiable distinctions (*St. John v. New York*, 201 U. S. 633, 26 Sup. Ct. 554, 50 L. ed. 896; *Missouri Pac. Ry. Co. v. Mackey*, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. ed. 107; *Minneapolis & St. L. Ry. Co. v. Herrick*, 127 U. S. 210, 8 Sup. Ct. 1176, 32 L. ed. 109; *Chicago, K. & W. R. R. Co. v. Pontius*, 157 U. S. 209, 15 Sup. Ct. 585, 39 L. ed. 675), and for a purpose within the legislative power. There can be no doubt, we think, that all of the occupations enumerated in the statute are more or less inherently dangerous to a degree which justifies such legislative regulation as is properly within the scope of the police power. We need not look for illustration or authority outside of the Labor Law to which this new statute has been added. The whole of that law which precedes the latest addition is devoted to restrictions and regulations imposed upon employers in specified occupations or conditions for the conservation of the health, safety and morals of employes. These restrictions and regulations do not affect all employers alike in all occupations, nor are they designed to have that effect. The mandate of the Federal Constitution is complied with if all who are in a particular class are treated alike. (*Missouri Pac. Ry. Co. v. Humes*, 115 U. S. 512, 523, 6 Sup. Ct. 110, 29 L. ed. 463; *Barbier v. Connolly*, 113 U. S. 27, 5 Sup. Ct. 357, 28 L. ed. 923; *Soon Hing v. Crowley*, 113 U. S. 703, 5 Sup. Ct. 730, 28 L. ed. 1145; *Magound v. Illinois Trust & Sav. Bank*, 170 U. S. 283, 294, 77 N. E. 970, 8 L. R. A. (N. S.) 314, 112 Am. St. 628; *People ex rel. Hatch v. Reardon*, 184 N. Y. 431; *People ex rel. Farrington v. Mensching*, 187 N. Y. 8, 16, 79 N. E. 884, 10 L. R. A. (N. S.) 625), and that, we think, is the effect of this classification.

Another objection urged against the statute is that it violates section 2 of article 1 of our State Constitution





which provides that "The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever." This objection is aimed at the provisions of sections 219-a and 219-d of the statute, which relate to the "scale of compensation" and "settlement of disputes," and has no reference to the fundamental question whether the attempt to impose upon the employer a liability when he is not at fault, constitutes a taking of property without due process of law. In other words, the objection which we are now considering bears solely upon the question whether the two last-mentioned sections of the statute deprive the employer of the right to have a jury fix the amount which he shall pay when his liability to pay has been determined against him. If these provisions relating to compensation are to be construed as definitely fixing the amount which an employer must pay in every case where his liability is established by the statute, there can be no doubt that they constitute a legislative usurpation of one of the functions of a common-law jury. In all cases where there is a right to trial by jury there are two elements which necessarily enter into a verdict for the plaintiff: 1. The right to recover. 2. The amount of the recovery. It is as much the right of a defendant to have a jury assess the damages claimed against him as it is to have the question of his liability determined by the same body. (*East Kingston v. Towle*, 48 N. H. 57, 97 Am. Dec. 575, 2 Am. Rep. 174; *Wadsworth v. Union Pacific Ry. Co.*, 18 Colo. 600, 33 Pac. 515, 23 L. R. A. 812, 36 Am. St. 309; *Fairchild v. Rich*, 68 Vt. 202, 34 Atl. 692.) This part of the statute, in its present form, has given rise to conflicting views among the members of the court, and, since the disposition of the questions which it suggests is not necessary to the decision of the case, we do not decide it.

Thus far we have considered only such portions of the statute as we deem to be clearly within the legisla-

tive power, and one as to which there is difference of opinion. This we have done because we desire to present no purely technical or hypercritical obstacles to any plan for the beneficent reformation of a branch of our jurisprudence in which, it may be conceded, reform is a consummation devoutly to be wished. In this spirit we have called attention to those features of the new statute which might be upheld as consonant with legislative authority under our constitutional limitations, as well as to the sections upon which we are in doubt. We turn now to the two objections which we regard as fatal to its validity.

This legislation is challenged as void under the fourteenth amendment to the Federal Constitution and under section 6, article 1 of our State Constitution, which guarantee all persons against deprivation of life, liberty or property without due process of law. We shall not stop to dwell at length upon definitions of "life," "liberty," "property" and "due process of law." They are simple and comprehensive in themselves and have been so often judicially defined that there can be no misunderstanding as to their meaning. Process of law in its broad sense means law in its regular course of administration through courts of justice, and that is but another way of saying that every man's right to life, liberty and property is to be disposed of in accordance with those ancient and fundamental principles which were in existence when our constitutions were adopted. "Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right of controverting by proof every material fact which bears upon the question of right in the matter involved. If any question of fact or liability be conclusively pre-

sumed against him this is not due process of law." (Ziegler v. S. & N. Ala. R. R. Co., 58 Ala. 594.) Liberty has been authoritatively defined as "the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation" (Matter of Jacobs, 98 N. Y. 98, 106, 50 Am. Rep. 636); and the right of property as "the right to acquire, possess and enjoy it in any way consistent with the equal rights of others and the just exactions and demands of the State." (Bertholf v. O'Reilly, 74 N. Y. 509, 515, 30 Am. Rep. 323.) The several industries and occupations enumerated in the statute before us are concededly lawful within any of the numerous definitions which might be referred to, and have always been so. They are, therefore, under the constitutional protection. One of the inalienable rights of every citizen is to hold and enjoy his property until it is taken from him by due process of law. When our constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another. That is still the law, except as to the employers enumerated in the new statute, and as to them it provides that they shall be liable to their employés for personal injury by accident to any workman arising out of and in the course of the employment which is caused in whole or in part, or is contributed to, by a necessary risk or danger of the employment or one inherent in the nature thereof, except that there shall be no liability in any case where the injury is caused in whole or in part by the serious and wilful misconduct of the injured workman. It is conceded that this is a liability unknown to the common law and we think it plainly constitutes a deprivation of liberty and property under the Federal and State Constitutions, unless its imposition can be justified under the police

power which will be discussed under a separate head. In arriving at this conclusion we do not overlook the cogent economic and sociological arguments which are urged in support of the statute. There can be no doubt as to the theory of this law. It is based upon the proposition that the inherent risks of an employment should in justice be placed upon the shoulders of the employer, who can protect himself against loss by insurance and by such an addition to the price of his wares as to cast the burden ultimately upon the consumer; that indemnity to an injured employé should be as much a charge upon the business as the cost of replacing or repairing disabled or defective machinery, appliances or tools; that, under our present system, the loss falls immediately upon the employé who is almost invariably unable to bear it, and ultimately upon the community which is taxed for the support of the indigent; and that our present system is uncertain, unscientific and wasteful, and fosters a spirit of antagonism between employer and employé which it is to the interests of the state to remove. We have already admitted the strength of this appeal to a recognized and widely prevalent sentiment, but we think it is an appeal which must be made to the people and not to the courts. The right of property rests not upon philosophical or scientific speculation nor upon the commendable impulses of benevolence or charity, nor yet upon the dictates of natural justice. The right has its foundation in the fundamental law. That can be changed by the people, but not by legislatures. In a government like ours theories of public good or necessity are often so plausible or sound as to command popular approval, but courts are not permitted to forget that the law is the only chart by which the ship of state is to be guided. Law as used in this sense means the basic law and not the very act of legislation which deprives the citizen of his rights, privileges or property.

Any other view would lead to the absurdity that the constitutions protect only those rights which the legislatures do not take away. If such economic and sociologic arguments as are here advanced in support of this statute can be allowed to subvert the fundamental idea of property, then there is no private right entirely safe, because there is no limitation upon the absolute discretion of legislatures, and the guarantees of the constitution are a mere waste of words. (*Wynehamer v. People*, 13 N. Y. 378; *Taylor v. Porter*, 4 Hill 140, 145, 40 Am. Dec. 274; *Norman v. Heist*, 5 Watts & Serg. 193, 40 Am. Dec. 493; *Hake v. Henderson*, 4 Dev. 15.) As stated by Judge Comstock in the case of *Wynehamer v. People*, "these constitutional safeguards, in all cases, require a judicial investigation, not to be governed by a law specially enacted to take away and destroy existing rights, but confined to the question whether, under the pre-existing rule of conduct, the right in controversy has been lawfully acquired and is lawfully possessed." (P. 395.) If the argument in support of this statute is sound we do not see why it cannot logically be carried much further. Poverty and misfortune from every cause are detrimental to the state. It would probably conduce to the welfare of all concerned if there could be a more equal distribution of wealth. Many persons have much more property than they can use to advantage and many more find it impossible to get the means for a comfortable existence. If the legislature can say to an employer, "you must compensate your employé for an injury not caused by you or by your fault," why can it not go further and say to the man of wealth, "you have more property than you need and your neighbor is so poor that he can barely subsist; in the interest of natural justice you must divide with your neighbor so that he and his dependents shall not become a charge upon the State?" The argument

that the risk to an employé should be borne by the employer, because it is inherent in the employment may be economically sound, but it is at war with the legal principle that no employer can be compelled to assume a risk which is inseparable from the work of the employé, and which may exist in spite of a degree of care by the employer far greater than may be exacted by the most drastic law. If it is competent to impose upon an employer, who has omitted no legal duty and has committed no wrong, a liability based solely upon a legislative fiat that his business is inherently dangerous, it is equally competent to visit upon him a special tax for the support of hospitals and other charitable institutions, upon the theory that they are devoted largely to the alleviation of ills primarily due to his business. In its final and simple analysis that is taking the property of A and giving it to B, and that cannot be done under our constitutions. Practical and simple illustrations of the extent to which this theory of liability might be carried could be multiplied *ad infinitum*, and many will readily occur to the thoughtful reader. There is, of course, in this country no direct legal authority upon the subject of the liability sought to be imposed by this statute, for the theory is not merely new in our system of jurisprudence, but plainly antagonistic to its basic idea. The English authorities are of no assistance to us, because in the king's courts the decrees of the Parliament are the supreme law of the land, although they are interesting in their disclosures of the paternalism which logically results from a universal employers' liability based solely upon the relation of employer and employé, and not upon fault in the employer. There are a few American cases, however, which clearly state the legal principle which, we think, is applicable to the case at bar, and with a brief reference to them we shall close this branch of the discussion. In the nitroglycer-

ine case (*Parrot v. Wells, Fargo & Co.*, 15 Wall. 524, 21 L. ed. 206) the plaintiff, who was the common landlord of the defendants and other tenants, sought to hold the defendants liable for damages occasioned to the premises occupied by the other tenants, by an explosion of nitroglycerine which had been delivered to the defendants as common carriers for shipment. It appeared that the defendants were innocently ignorant of the contents of the packages containing the dangerous explosives, and that they were guilty of no negligence in receiving or handling them. Upon these facts the Federal Supreme Court held that it was a case of unavoidable accident for which no one was legally responsible. In *Ohio & Mississippi Ry. Co. v. Lackey* (78 Ill. 55, 20 Am. Rep. 259) the question was whether the railroad company was liable under a statute which provided that "every railroad company running cars within this State shall be liable for all the expense of the coroner and his inquest, and the burial of all persons who may die on the cars, or who may be killed by collision or other accident occurring to such cars, or otherwise." In speaking of the effect of that section of the law Mr. Justice Breese observed: "An examination of the section will show that no default, or negligence of any kind, need be established against the railroad company, but they are mulcted in heavy charges if, notwithstanding all their care and caution, a death should occur on one of their cars, no matter how caused, even if by the party's own hand. Running of trains by these corporations is lawful and of great public benefit. It is not claimed that the liability attaches for the violation of any law, the omission of any duty or the want of proper care or skill in running their trains. The penalty is not aimed at anything of this kind. We say penalty, for it is in the nature of a penalty, and there is a constitutional inhibition against imposing penalties where no law has

been violated or duty neglected. Neither is pretended in this case, nor are they in contemplation of the statute. A passenger on a train dies from sickness. He is a man of wealth. Why should his burial expenses be charged to the railroad company? There is neither reason nor justice in it; and if he be poor, having not the means for a decent burial, the general law makes ample provision for such cases." To the same effect are the numerous cases arising under statutes passed by different states imposing upon railroad corporations absolute liability for killing or injuring upon their rights of way horses, cattle, etc., by running over them, in which this liability was held to constitute a deprivation of property without due process of law. (*Jensen v. Union Pacific Ry. Co.*, 6 Utah 253, 21 Pac. 994, 4 L. R. A. 724; *Ziegler v. South & North Alabama Ry. Co.*, 58 Ala. 594; *Birmingham Ry. Co. v. Parsons*, 100 Ala. 662, 13 So. 602, 27 L. R. A. 263, 46 Am. St. 92; *Bielingbery v. Montana Union Ry. Co.*, 8 Mont. 271, 20 Pac. 314, 2 L. R. A. 813; *Schenk v. Union Pacific Ry. Co.*, 5 Wyo. 430, 40 Pac. 840; *Catril v. Union Pacific Ry. Co.*, 2 Idaho 576, 21 Pac. 416.)

A different interpretation has been given to statutes imposing upon railroad corporations the duty to fence their rights of way, under which the liability is imposed for failure to obey the command of the statutes. (*Quackenbush v. Wisconsin Ry. Co.*, 62 Wis. 411, 22 N. W. 519; *Missouri Pac. Ry. Co. v. Humes*, 115 U. S. 512, 6 Sup. Ct. 110, 29 L. ed. 463; *Minneapolis & St. L. Ry. Co. v. Beckwith*, 129 U. S. 26, 9 Sup. Ct. 207, 32 L. ed. 585.) "But even such statutes," says Black in his work on Constitutional Law (2d ed. p. 351), "cannot go beyond the imposition of such a penalty in cases where the fault lies at the door of the company. If the law attempts to make such companies liable for accidents which were not caused by their negligence or disobedience of the law,



but by the negligence of others or by uncontrollable causes, or does not give the company an opportunity to show these facts in its own defense, it is void."

We conclude, therefore, that in its basic and vital features the right given to the employé by this statute, does not preserve to the employer the "due process" of law guaranteed by the constitutions, for it authorizes the taking of the employer's property without his consent and without his fault. So far as the statute merely creates a new remedy in addition to those which existed before it is not invalid. The state has complete control over the remedies which it offers to suitors in its courts even to the point of making them applicable to rights or equities already in existence. It may change the common law and the statutes so as to create duties and liabilities which never existed before. It is true, as stated by Mr. Justice Brown in *Holden v. Hardy* (169 U. S. 366, 385, 386), that "the law is, to a certain extent, a progressive science; that in some of the states methods of procedure, which at the time the constitution was adopted were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. Even before the adoption of the constitution, much had been done toward mitigating the severity of the common law, particularly in the administration of its criminal branch. \* \* \* The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to

pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the states homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the states grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority." The power of the state to make such changes in methods of procedure and in substantive law is clearly recognized. (*Hurtado v. California*, 110 U. S. 516, 4 Sup. Ct. 111, 292, 28 L. ed. 232; *Hayes v. Missouri*, 120 U. S. 68, 7 Sup. Ct. 350, 30 L. ed. 578; *Missouri Pac. R. Co. v. Mackey*, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. ed. 107; *Hallinger v. Davis*, 146 U. S. 314, 13 Sup. Ct. 105, 36 L. ed. 986; *Matter of Kemmler*, 136 U. S. 436, 10 Sup. Ct. 930, 34 L. ed. 519; *Duncan v. Missouri*, 152 U. S. 377, 14 Sup. Ct. 570, 38 L. ed. 485.) We repeat, however, that this power must be exercised within the constitutional limitations which prescribe the law of the land. "Due process of law" is process due according to the law of the land, and the phrase as used in the fourteenth amendment of the Federal Constitution with reference to the power of the states means the general law of the several states as fixed or guaranteed by their constitu-

tions. As stated by Mr. Webster, in the Dartmouth College case, "the law of the land is the general law; the law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial."

If we are warranted in concluding that the new statute violates private right by taking the property of one and giving it to another without due process of law, that is really the end of this case. But the auspices under which this legislation was enacted, no less than its intrinsic importance, entitle its advocates to the fullest consideration of every argument in its support, and we, therefore, take up the discussion of the police power under which this law is sought to be justified. The police power is, of course, one of the necessary attributes of civilized government. In its most comprehensive sense it embraces the whole system by which the state seeks to preserve the public order, to prevent offenses against the law, to insure to citizens in their intercourse with each other the enjoyment of their own so far as is reasonably consistent with a like enjoyment of rights by others. Under it persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the state. But it is a power which is always subject to the constitution, for in a constitutional government limitation is the abiding principle, exhibited in its highest form in the constitution as the deliberative judgment of the people, which moderates every claim of right and controls every use of power. In the language of Chief Justice Shaw, in *Commonwealth v. Alger* (7 Cush. (Mass.) 85): "It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries or prescribe limits to its exercise." It covers a multitude of things that are designed to protect life, limb, health, comfort, peace and property according to the maxim *sic utere tuo ut alienum non*

laedas, but its exercise is justified only when it appears that the interests of the public generally, as distinguished from those of a particular class, require it, and when the means used are reasonably necessary for the accomplishment of the desired end, and are not unduly oppressive. (*Lawton v. Steele*, 152 U. S. 133, 137, 14 Sup. Ct. 499, 38 L. ed. 385; *Colon v. Lisk*, 153 N. Y. 188, 196, 47 N. E. 302, 60 Am. St. 609; *Wright v. Hart*, 182 N. Y. 330, 75 N. E. 404, 2 L. R. A. (N. S.) 338.) In order to sustain the legislation under the police power the courts must be able to see that its operation tends in some degree to prevent some offense or evil, or to preserve public health, morals, safety and welfare. If it discloses no such purpose, but is clearly calculated to invade the liberty and property of private citizens, it is plainly the duty of the courts to declare it invalid, for legislative assumption of the right to direct the channel into which the private energies of the citizen may flow, or legislative attempt to abridge or hamper the right of the citizen to pursue, unmolested and without unreasonable regulation, any lawful calling or avocation which he may choose, has always been condemned under our form of government. Concrete illustrations of what may and what may not be done under the police power are to be found in this very Labor Law of which the new statute is a part. As this statute stood before article 14-a was added, it regulated electric work, the operation of elevators, work on scaffolds, work with explosives and compressed air, the construction of tunnels and railroad work. It regulated the hours of work in certain employments; it directed the payment of wages in cash at specified periods; it provided for the protection of employes engaged in the erection of buildings; it compelled the employer to guard dangerous and exposed machinery; to construct fire escapes and ventilating appliances; to provide toilet facilities, pure drink-

ing water and sanitary arrangements; it prohibited the employment of women, and of children under certain ages, in specified occupations; it regulated the hours of labor of minors; it modified the fellow-servant rule, the law of contributory negligence and the assumption of risks; and, in short, it imposed upon the employer many restrictions and duties which were unknown to the common law. Broadly classified, all these and similar statutory provisions which are designed, in one way or another, to conserve the health, safety or morals of the employés, and to increase the duties and responsibilities of the employer, are rules of conduct which properly fall within the sphere of the police power. (*Holden v. Hardy*, 169 U. S. 366, 18 Sup. Ct. 383, 42 L. ed. 780; *Missouri Pac. Ry. Co. v. Mackey*, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. ed. 107.) But the new addition to the Labor Law is of quite a different character. It does nothing to conserve the health, safety or morals of the employés, and it imposes upon the employer no new or affirmative duties or responsibilities in the conduct of his business. Its sole purpose is to make him liable for injuries which may be sustained wholly without his fault, and solely through the fault of the employé, except where the latter fault is such as to constitute serious and willful misconduct. Under this law, the most thoughtful and careful employer, who has neglected no duty, and whose workshop is equipped with every possible appliance that may make for the safety, health and morals of his employés, is liable in damages to any employé who happens to sustain injury through an accident which no human being can foresee or prevent, or which, if preventable at all, can only be prevented by the reasonable care of the employé himself. That this is the unmistakable theory and purpose of the act is made perfectly plain by the recital in section 215, which sets forth that from the nature, conditions or means of pro-

secution of the work in the employments which are classified as dangerous, "extraordinary risks to the life and limb of workmen engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen." And to make the matter still more plain, the learned counsel for the commission argues in his brief that "if it is competent for the legislature to say to the employer in a dangerous trade, 'use the utmost care in giving your workmen safe work, so that no act of yours, or implement of yours, or work that you set them to do shall hurt them, and if you fail you shall be liable in damages,' if it is competent to make such a law, then it is equally competent to say as in this new act directly, 'you shall be responsible for all damages caused by unsafe condition of work,' and that is just what the liability for trade risks under the new act means." In this argument the learned counsel ignores, or at least misses, as we think, the vital distinction between legislation which imposes upon an employer a legal duty, for the failure to perform which he may be penalized or rendered liable in damages, and legislation which makes him liable notwithstanding he has faithfully observed every duty imposed upon him by law. At pages 46 and 47 of the report of the commissioners are quoted the several pertinent provisions of our State Constitution. (Art 1, sec. 18; art. 1, sec. 2; art. 1, sec. 1; art. 1, sec. 6.) With reference to these, the commissioners say: "It is obvious, on a mere reading, that the first section makes it impossible for the legislature to enact any law which will take away from the representatives of an injured workman the right of action there named for injuries causing death, nor can the legislature limit it in any way. It is equally obvious, it seems to us, that it was the intention of the second section of

the Constitution (Art. 1, sec. 2), to provide that in all controversies in the courts of law either side should finally have a right to a jury trial on the question of liability, and however successful or unsuccessful jury trials may be in cases of employer's liability, or in other cases, that solemn mandate of the Constitution cannot be set aside. The third and fourth sections of the Constitution above quoted are practically those which, like the fourteenth amendment of the Federal Constitution, provide for due process of law in all legislation, that is, speaking generally, which prohibit the passage by the legislature of such legislation as shall arbitrarily deprive any of the citizens of the state of life, liberty or property."

These are interesting and salient admissions, but the ease with which these constitutional provisions are brushed aside is startling. Continuing, the commissioners say: "But we regard it as settled that the legislature has power, if it so chooses, to change or abrogate the common law on employer's liability, or the Employers' Liability Act, or any other statutes in regard thereto. \* \* \* The legislature of this state, in the exercise of its general powers, \* \* \* has in the past so legislated as to prescribe that employers in New York industries, shall conduct their business, use their machines and use their property in such ways as shall conduce to the safety of the employés and the prevention of accident and disease. Such is the whole purpose of the Labor Law. \* \* \* We are of opinion that it is competent for the legislature to take a further step and provide conditions of the carrying on of such dangerous industries—not at the moment conditions as to the method of carrying them on—but conditions providing that any man in the state who carries on such dangerous trades shall be liable to make compensation to the employés injured either by the fault of the employer, or by those unavoidable risks of the employ-

ment. The effect of such a statute would be to reverse the common-law doctrine that the employé assumes the risk of his employment."

With all due respect to the members of the commission we beg to observe that the statute enacted in conformity with their recommendations, does not stop at reversing the common law; it attempts to reverse the very provisions of the Constitution which, the commissioners admit, are obviously beyond the reach of the legislature. We cannot understand by what power the legislature can take away from the employer a constitutional guaranty of which the employé may not also be deprived. If it is beyond the power of the legislature to take from the representatives of deceased employés their rights of action under the Constitution, by what measure of power or justice may the legislature assume to take from the employer the right to have his liability determined in an action at law? Conceding, as we do, that it is within the range of proper legislative action to give a workman two remedies for a wrong, when he had but one before, we ask, by what stretch of the police power is the legislature authorized to give a remedy for no wrong? If, before the passage of this law, the employer had a right to a jury trial upon the question of liability, where and how did he lose it? Can it be taken from him by the mere assertion that this statute only reverses the common-law doctrine that the employé assumes the risk of his employment? It would be quite as logical and effective to argue that this legislation only reverses the laws of nature, for in everything within the sphere of human activity the risks which are inherent and unavoidable must fall upon those who are exposed to them. We must admit that what the legislature may prohibit it may absolutely control. Where the right to exist, as in case of corporations, depends upon the will of the legislature, that right may be grant-



ed subject to prescribed conditions. In such a case an employer may be made an insurer of the safety of his employés as a condition of the permission to engage in business. But when an industry or calling is per se lawful and open to all, and, therefore, beyond the prohibitive power of the legislature, the right of governmental control is subject to such reasonable enactments as are directly designed to conserve health, safety, comfort, morals, peace and order. (*Lochner v. New York*, 198 U. S. 45, 25 Sup. Ct. 539, 49 L. ed. 937.) For the failure of an employer to observe such regulations the legislature may unquestionably enact direct penalties or create presumptions of fault which, if not rebutted by proof, may be regarded as sufficient evidence of liability for damages. That must be the extreme limit of the police power, for just beyond is the Constitution which, in substance and effect, forbids that a citizen shall be penalized or subjected to liability unless he has violated some law or has been guilty of some fault.

The limitations of the police power are illustrated in a great variety of cases. In *Matter of Jacobs* (98 N. Y. 98, 99, 50 Am. Rep. 636), it was held that an act was void which made it a misdemeanor to manufacture cigars or prepare tobacco in certain tenements. In *People v. Marx* (99 N. Y. 377, 2 N. E. 29, 52 Am. Rep. 34), this court condemned an act absolutely prohibiting the manufacture or sale of oleomargarine, upon the ground that it interfered with a lawful industry, not injurious to the public and not fraudulently conducted, although in a later case (*People v. Arensberg*, 105 N. Y. 123, 11 N. E. 277, 59 Am. Rep. 483), another statute relating to the same subject was upheld because it was directly aimed at a designed and intentional imitation of dairy butter. In *People v. Gillson* (109 N. Y. 389, 404, 17 N. E. 343, 4 Am. St. 465) it was held that a statute was not within the police power which prohibited the sale or dis-

posal of any article of food upon any representation or inducement that anything else will be delivered as a gift, prize, premium or reward to the purchaser. The ground of the decision was that it was not a health law; that it was not designed to prevent the adulteration of food, and that it was not in the power of the legislature to convert an innocent act into a crime. In *Colon v. Lisk* (153 N. Y. 188, 47 N. E. 302, 60 Am. St. 609) the statute under consideration provided for the summary seizure of any boat or vessel, used by one person in interfering with the oysters or shell fish of another, and for its forfeiture and sale. It was held that the statute sanctioned an unauthorized confiscation of private property for the mere protection of private rights and was not within the police power of the state. In *People v. Hawkins* (157 N. Y. 1, 51 N. E. 257, 68 Am. St. 736, 42 L. R. A. 490) this court decided that a statute was void which made it a misdemeanor to sell or expose for sale any goods made in a penal institution unless they were labeled "convict made." In *People v. Orange County Road Com. Co.* (175 N. Y. 84, 67 N. E. 129, 65 L. R. A. 33) it was held that the state cannot dictate to independent contractors on state work the hours of labor which they shall prescribe for their employés, where there was nothing in the character of the work or in the provisions of the contract to justify legislative interference. In *Beardsley v. N. Y., L. E. & W. R. R. Co.* (162 N. Y. 230, 56 N. E. 488) what is known as the "Mileage Book Act," which required railroad companies to issue mileage books and provided a penalty for refusal, was unconstitutional as to railroad corporations in existence at the time of its enactment, because it was an illegal invasion of the vested property rights of such corporations. In *Schnaier v. Navarre Hotel & I. Co.* (182 N. Y. 88, 74 N. E. 561, 108 Am. St. 790, 70 L. R. A. 722) the court pronounced invalid a statute which pro-

vided that it should be unlawful for a copartnership to engage in the business of employing a master plumber unless each and every member thereof shall have registered, after examination and certification by an examining board of plumbers. In *People v. Marcus* (185 N. Y. 257, 77 N. E. 1073, 13 Am. St. 902, 7 L. R. A. (N. S.) 282), it was held that a section of the Penal Code was void which provided, in substance, that no person shall make the employment of another, or the continuance of such employment, conditional upon the employé's not joining or becoming a member of a labor organization. In *People v. Williams* (189 N. Y. 131, 134, 81 N. E. 778, 121 Am. St. 854, 12 L. R. A. (N. S.) 1130), this court condemned that part of the Labor Law which prohibited the employment of an adult female in a factory before six o'clock in the morning or after nine o'clock in the evening, and held that it was not a proper exercise of the police power, since it had no reference to the number of hours of labor or to the healthfulness of the employment.

We have yet to consider certain special cases upon which the exponents of this new law have planted their faith and hope, and these run along such divergent lines as to indicate, more clearly than anything else, the absence of any sound legal theory upon which this legislation can be sustained. These cases are cited in support of the contention that the common law and our statutes furnish many illustrations of legal liability without fault, but we shall endeavor by analysis to show how inapplicable they are to the questions now before the court. The case of *Marvin v. Trout* (199 U. S. 212, 224, 26 Sup. Ct. 31, 34, 50 L. ed. 157) arose under an Ohio statute which subjected premises used for gambling to a lien for money lost in gambling. The statute forbade gambling, and the court very properly argued that "The power of the state to enact laws to suppress gambling

cannot be doubted, and, as a means to that end, we have no doubt of its power to provide that the owner of the building in which gambling is conducted, who knowingly looks on and permits such gambling, can be made liable in his property which is thus used, to pay a judgment against those who won the money, as is provided in the statute. \* \* \* The liability of the owner of the building to make good the loss sustained, under the circumstances set forth in the statute, was clearly part of the means resorted to by the legislature for the purpose of suppressing the evil in the interests of the public morals and welfare." (P. 224.) A more cogent illustration of the undoubted application of the police power cannot be found. In the interest of good morals it is not merely the right but the duty of the state to suppress gambling, and the case, so far from being an authority for the idea of liability without fault, proceeds directly upon the theory that the owner was at fault in permitting his premises to be used for an illegal purpose. Then there is the case of *Bertholf v. O'Reilly* (74 N. Y. 509, 30 Am. Rep. 323), in which this court upheld the so-called "Civil Damage act" which gave to every husband, wife, parent, guardian, employer or other person who should be injured in person or property or means of support by any intoxication of any person, a right of action against any person who by selling or giving away intoxicating liquors caused the intoxication, in whole or in part, and subjecting to the same liability any person or persons owning or renting or permitting the occupation of any building or premises with knowledge that intoxicating liquors were to be sold thereon. In that case, as in the case of *Marvin v. Trout* (*supra*), the controlling principle was that the state had the right to prohibit and, therefore, the absolute right to control. As Judge Andrews pertinently observed, "the right of the state to regulate the traffic in intoxicating liquors, with-

in its limits, has been exercised from the foundation of the government, and is not open to question. The state may prescribe the persons by whom and the conditions under which the traffic may be carried on. It may impose upon those who act under its license such liabilities and penalties as in its judgment are proper to secure society against the dangers of the traffic and individuals against injuries committed by intoxicated persons under the influence of or resulting from their intoxication." (P. 517.) The defendant in that case, it is true, was not the licensee, but he had rented his premises for the traffic in intoxicating liquors knowing that they were to be so used. Upon that feature of the case Judge Andrews said: "The liability imposed upon the landlord for the acts of the tenant is not a new principle in legislation. His liability only arises when he has consented that the premises may be used as a place for the sale of liquors. He selects the tenant, and he may, without violating any constitutional provision, be made responsible for the tenant's acts connected, with the use of the leased property." (P. 525.) That is very far from being a case of liability without fault. The enactment of the "Civil Damage Act" was clearly within the police power, and the liability imposed did not deprive either the tenant or the landlord of "due process of law," for each had the right to his day in court and an opportunity to disprove the facts upon which the statutory right of action depended. Let us suppose, however, that the statute had gone so far as to provide that the mere fact of selling liquor by the tenant, or the mere fact of renting the premises for that purpose by the landlord, should be deemed conclusive proof of the intoxication of the person to whom the liquor was sold, and of the fact that the person bringing the suit had suffered injury thereby, so that the person sued could not be heard to deny or disprove his responsibility for the intoxi-

cation or the injuries resulting therefrom. Would that be "due process of law?" Suppose that the Ohio statute, which was also clearly within the general scope of the police power, had imposed upon the landlord a liability for money lost in gambling on his premises without his knowledge of the purpose for which the building was used, and had declared that evidence of the mere loss of the money should be sufficient to sustain a judgment against him. That would clearly be a case of liability without fault; but what court, controlled by constitutional limitations, would render such a judgment? We are referred to the case of *Chicago, Rock Island & Pacific Railway Co. v. Zerneck* (183 U. S. 582, 22 Sup. Ct. 229, 46 L. ed. 339) as an illustration of liability without fault. We think that case has no analogy to the case at bar. There a statute of Nebraska imposed upon railroad corporations a liability for all injuries to passengers except when occasioned by the criminal negligence of the person injured, or when the injury was sustained in the violation of some express rule or regulation of the corporation. The point decided in that case was that this rule of liability was a part of the very statute under which the corporation took its charter. The defendant in the case at bar is a railroad corporation, and as such may be subject to state regulations which would not apply to other corporations or to individuals, but we are not now concerned with that question, since the statute before us has reference to employers in their relations with their employés, and not to railroads in their service to the public.

In support of this new statute we are also asked to consider the supposed analogies of the law of deodands; the common-law liability of the husband for the torts of his wife; the liability of the master for the acts of his servant, and the liability of a ship for the care and maintenance of sick or disabled seamen. From the historical

point of view, these subjects might be very entertainingly elaborated, but for the practical purposes of this discussion they may be very briefly disposed of. If the law of deodands was ever imported into this country it has never, to our knowledge, found expression in a single statute or judicial decision. It was one of those primitive conceptions of justice under which a chattel which caused the death of a human being was forfeited to the king. We are unable to see what bearing it can have upon the question whether, under our Constitutions, it is due process of law to render a man liable for damages when he has been guilty of no fault. Quite as far-fetched seems the argument based upon the common-law liability of the husband for the torts of his wife. Under the common-law unity of husband and wife, the latter was presumed to act under the compulsion of the former; and the wife could never be sued alone. As the marriage vested the husband with the personal property of the wife, it was simply logical that he should pay her obligations. So with the liability of the master for the acts of his servant, the whole theory is expressed in the maxim *qui facit per alium facit per se*. He who acts through another acts himself. How do these illustrations support the principle of liability without fault? Could a husband or master be held liable under the common law when the wife or servant had been guilty of no wrong? Would the common law have denied to the husband or master the right to provide that no tort had been committed by the wife or servant? The admiralty cases of *The Osceola* (189 U. S. 158, 23 Sup. Ct. 483, 47 L. ed. 760), *The City of Alexandria* (17 Fed. 399), and the case of *Scarff v. Metcalf* (107 N. Y. 211, 13 N. E. 796, 1 Am. St. 807) seem to us equally inapplicable as authorities for the proposition that the law recognizes liability without fault. It is common knowledge that the contracts and services of seamen are exceptional in

character. A seaman engages for the voyage. He is subject to physical discipline, and exposed to hardships and dangers peculiar to the sea. He is, in effect, a co-adventurer with the master, and shares in the risks of shipwreck and capture, often losing his wages by casualties which do not affect workmen on land. For these and many other obvious reasons the maritime law has wisely and benevolently built up peculiar rights and privileges for the protection of the seaman which are not recognizable in the common law. When he is sick or injured he is entitled to be cared for at the expense of the ship, and for the failure of the master to perform his duty in this regard, the ship or the owner is liable. That is a right given to the seaman, and a duty enjoined upon the master, by the plainest dictates of justice, which arises out of the necessities of the case; and, because of the reason of the rule, the right and duty cease when the contract has terminated and the seaman has been returned to the port of shipment or discharge, or has been furnished with means to do so. But beyond this duty on the part of the master or owner, there seems to be no liability whatever for injuries sustained by the seaman in the course of his work. We think it may confidently be asserted that within the whole range of the maritime law there will be found no rule which renders master, owner or ship liable in damages for an injury sustained by the seaman without fault on the part of any one, or without any fault except his own. The case of *Scarff v. Metcalf* (107 N. Y. 211, 13 N. E. 796, 1 Am. St. 807) was not disposed of upon any such theory, but was based upon the neglect of the master to perform the duty of caring for the injured seaman imposed by the maritime law. The legal status of seamen is clearly illustrated in the case of *Robertson v. Baldwin* (165 U. S. 275, 17 Sup. Ct. 326, 41 L. ed. 715), where it was held that compulsory personal service of a seaman



in performance of his contract was not a violation of the thirteenth amendment to the Federal Constitution forbidding slavery or involuntary servitude. In that case the learned justice who wrote for the court suggested that enforced service under a seaman's contract was not involuntary within the Constitution, although the contract would not be enforced by the courts. But in the later case of *Clyatt v. United States* (197 U. S. 207, 25 Sup. Ct. 429, 49 L. ed. 726) it was held that peonage or enforced service, whether under a voluntary contract of service or not, was involuntary servitude and forbidden by the Constitution in all cases save those arising out of the exceptional relations of the seaman to his ship, the child to its parents, and the apprentice to his master. In the review in *Robertson v. Baldwin* (*supra*), of the various decisions in admiralty, it is made quite clear that the courts have always regarded seamen as irresponsible to a degree which makes them incapable of fully protecting their own rights. With the power given to the employer of seamen to compel specific performance of their contracts, there are imposed certain obligations unknown to any other relation. It is a relation which rests on affirmative law and not on natural right. We can find no analogy between a case arising out of such a relation and one in which an adult of sound mind and capable of freely contracting for himself voluntarily enters upon employment from which he is at liberty to withdraw whenever he will.

Great reliance is placed upon the case of *St. Louis & San Francisco Ry. Co. v. Mathews* (165 U. S. 1, 17 Sup. Ct. 243, 41 L. ed. 611) in support of the contention that there may be liability where there is no delinquency. That was an action brought by an owner of land adjoining the defendant's railroad to recover damages for the destruction of his dwelling house and other buildings, caused by fire which spread from sparks emit-

ted by the defendant's locomotives. The action was brought under a statute of the state of Missouri which provided that "each railroad corporation, owning or operating a railroad in this state, shall be responsible in damages to every person and corporation whose property may be injured or destroyed by fire communicated, directly or indirectly, by locomotive engines in use upon the railroad owned or operated by such railroad corporation; and each such railroad corporation shall have an insurable interest in the property upon the route of the railroad owner or operated by it, and may procure insurance thereon in its own behalf, for its protection against such damages." The statute was upheld as being within the legislative power of the state. That decision is amply supported by a number of reasons which have no application to the controversy at bar. To begin with, the Constitution of Missouri contained a clause, which was in force when the railroad company obtained its charter, providing that "the exercise of the police power of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the state." (Missouri Const., art. 12, sec. 5.) Another ample reason is found in the fact that railroads alone "have the privilege of taking a narrow strip of land from each owner, without his consent, along the route selected for the track, and of traversing the same at all hours of the day and night, and at all seasons whether wet or dry, with locomotive engines that scatter fire along the margin of the land not taken, thereby subjecting all combustible property to extraordinary hazard of loss." (*Grissell v. Housatonic R. R. Co.*, 54 Conn. 447, 9 Atl. 137, 1 Am. St. 138.) Then, again, "the right to use the agencies of fire and steam in the movement of trains is derived from legislation of the state; and it certainly cannot be denied that

it is for the state to determine what safeguards must be used to prevent the escape of fire, and to define the extent of the liability for fires resulting from the operation of trains by means of steam locomotives. This is a matter within state control." (Hartford Ins. Co. v. Chi., Mil. & St. Paul Ry. Co., 62 Fed. 904.) A legislature may, if it chooses, make it a condition of the right to run carriages propelled by the agency of fire, that the corporation employing them shall be responsible for all injuries which fire may cause. (Ingersoll & Quigley v. Stockbridge & Pittsfield R. R. Co., 8 Allen 438; Grand Trunk Ry. Co. v. Richardson, 9 U. S. 454, 23 L. ed 356.) And, finally, these statutes are designed to protect the rights of those who have no contractual relations to the corporations which inflict the injury. In such a case, when both parties are equally faultless, the legislature may properly consider it to be just that the duty of insuring private property against loss or injury caused by the use of the dangerous instruments should rest upon the railroad company, which employs the instruments and creates the peril for its own profit, rather than upon the owner of the property who has no control over or interest in these instruments. Quite aside from the considerations which support such a statutory liability against railroad corporations, it may be added that it is in no sense an extension of the rule of the common law to modern conditions, but in reality a return to the original common-law doctrine under which every person who permitted fire started by him to escape beyond his house or close was liable to every one who suffered loss or injury thereby. The severity of that early English rule was moderated by numerous statutes, among which are 6 Anne and 14 Geo. III. As to these two last-mentioned statutes it has been held that they became by adoption a part of the common law of this state (Thompson's Negligence, vol. 1, p. 148 et seq., notes under "Lia-

bility for Damages by Fire," and *Webb v. R., W. & O. R. R. Co.*, 49 N. Y. 420, 426, 10 Am. Rep. 389), under which neither individuals nor corporations are liable for escaping fire unless there is negligence. (*Clark v. Foot*, 8 Johns. 421; *Bennett v. Scutt*, 18 Barb. 347, 349; *Stuart v. Hawley*, 22 Barb. 619, 621; *Radcliff's Exrs. v. Mayor, etc., of Brooklyn*, 4 N. Y. 195, 200, 53 Am. Dec. 357; *Calkins v. Barger*, 44 Barb. 424; *Sheldon v. Hudson R. R. Co.*, 14 N. Y. 219, 67 Am. Dec. 155; *Steinweg v. Erie Ry.*, 43 N. Y. 123, 127, 3 Am. Rep. 673.) The cited cases arising out of injuries inflicted by animals of known dangerous or vicious propensities, and the liability which has often been imposed for the maintenance of private nuisances, we shall not discuss, for we think they are governed by well-settled principles which clearly have no application to the questions now before us.

In the addenda to the instructive brief of the counsel for the commission our attention is called to three decisions of the Federal Supreme Court which have been but recently decided and not yet officially reported. (*Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 186, 55 L. ed. 112); *Assaria State Bank v. Dolley*, 219 U. S. 121, 31 Sup. Ct. 189, 55 L. ed. 123), and *Engel v. O'Malley*, 219 U. S. 128, 31 Sup. Ct. 190, 55 L. ed. 128.) These cases, it is contended, strongly support the validity of the legislation which we are condemning because, as counsel asserts, they go directly to the ultimate question: "Is the act an unreasonable regulation of the status of employment?" We have tried to make it clear that in our judgment this statute is not a law of regulation. It contains not a single provision which can be said to make for the safety, health or morals of the employ  s therein specified, nor to impose upon the enumerated employers any duty or obligation designed to have that effect. It does not affect the status of employment at all, but writes into the

contract between the employer and employé, without the consent of the former, a liability on his part which never existed before and to which he is permitted to interpose practically no defense, for he can only escape liability when the employé is injured through his own wilful misconduct. That is a defense which needs no legislative sanction, since it would be abhorrent to the most primitive notions of justice to permit one to impose liability for his wilfully self-inflicted injuries upon another who is wholly free from responsibility for them. The case of *Engel v. O'Malley* (*supra*) is so clearly distinguishable from the case at bar that we need only state the facts to mark the contrast. The *Engel* case arose under a New York statute which provides that individuals and firms shall not engage in the business of receiving deposits for safe-keeping or for transmission, or for any other purpose, or in the business of banking, without first obtaining from the state comptroller a license. The same statute further provides that applicants for such a license must pay a prescribed fee, give bonds and submit to other restrictions. We have already passed upon the constitutionality of certain parts of that statute (*Laws 1907, ch. 185*) in *Musco v. United Surety Co.* (196 N. Y. 459, 465, 90 N. E. 171, 173, 134 Am. St. 851), which was an action upon a bond given under it, and have held that "the regulation of the business of receiving deposits is plainly within the power possessed by the state to regulate the conduct of various pursuits when necessary for the protection of the public." (P. 465.) The portion of the statute under consideration in the last cited case was plainly directed against an obvious evil which vitally affected the public welfare. The city of New York is the gateway through which this country admits each year thousands of poor and ignorant immigrants who deal with individuals and firms engaged in the business of exchanging domestic for for-

eign money, receiving deposits and transmitting remittances to foreign ports. It is a business which may, and probably does, attract some irresponsible and mercenary adventurers. A law designed to regulate and safeguard such a business in a way which affects no constitutional property rights, is plainly within the police power of the state. That is all that was involved in the Musco case, and that is the extent to which this court has passed upon the constitutionality of the New York statute (Laws 1907, ch. 185). It need hardly be argued that a law passed under the guise of such a purpose, but having in fact no relation to it, and accomplishing nothing to make the business of receiving deposits more safe, would be as far beyond the sphere of the police power as an amendment to the Banking Law requiring banks and bankers to protect their customers, to whom they pay moneys, against thefts or other physical losses thereof; or an amendment to the Labor Law which would compel the industrial employers to give each employé a vacation on full pay during two months of every year.

As to the cases of *Noble State Bank v. Haskell* (219 U. S. 104, 31 Sup. Ct. 186, 55 L. ed. 112) and *Assaria State Bank v. Dolley* (219 U. S. 121, 31 Sup. Ct. 189, 55 L. ed. 123) we have only to say that if they go so far as to hold that any law, whatever its effect, may be upheld because by the "prevailing morality" or the "strong and preponderant opinion" it is deemed "to be greatly and immediately necessary to the public welfare," we cannot recognize them as controlling of our construction of our own Constitution. That the business of banking in the several states may be regulated by legislative enactment is too obvious for discussion. That the extent to which such state regulation may be carried must depend upon the difference in constitutional provisions is also plain. How far these late decisions of the Federal Supreme Court are to be regarded as committing that tribunal

to the doctrine that any citizen may be deprived of his private property for the public welfare we are not prepared to decide. All that it is necessary to affirm in the case before us is that in our view of the Constitution of our state the liability sought to be imposed upon the employers enumerated in the statute before us is a taking of property without due process of law, and the statute is, therefore, void.

The judgment of the Appellate Division should be reversed and judgment directed for the defendant, with costs in all courts.

Cullen, Ch. J., Gray, Haight, Willard Bartlett, Chase and Collin, JJ., concur; Cullen, Ch. J., also files an opinion, with whom Willard, Bartlett, J., concurs.

Judgment reversed, etc.

A concurring opinion was written by Chief Justice Cullen, in which he said:

I concede that the legislature may abolish the rule of fellow-servant as a defense to an action by employé against the employer. Indeed, we have decided that in upholding the so-called Barnes Act (*Schradin v. N. Y. C. & H. R. R. Co.*, 194 N. Y. 534, 87 N. E. 1126.) I concede that the legislature may also abolish as a defense the rule of assumption of risk and that of contributory negligence unless the accident proceed from the wilful act of the employé. I concede that in a work, occupation or business of such a nature that the legislature might prohibit its pursuit or exercise altogether, the legislature may prescribe terms under which it may be carried on. Plainly, this litigation does not present such a case. The legislature could not revoke the franchise it had previously given to the defendant to operate a railroad. (*People v. O'Brien*, 111 N. Y. 1, 18 N. E. 692, 7 Am. St. 68, 2 L. R. A. 255,) I am not prepared to deny that where the effects of the work, even though prosecuted carefully, go beyond a person's own

property and injure third persons in no way connected therewith, the person for whose account the work is done may be held liable for injuries occasioned thereby. I also concede the most plenary power in the legislature to prescribe all reasonable rules for the conduct of the work which may conduce to the safety and health of persons employed therein. But I do deny that a person employed in a lawful vocation, the effects of which are confined to his own premises, can be made to indemnify another for injury received in the work unless he has been in some respects at fault. I am not impressed with the argument that "the common law imposed upon the employé entire responsibility for injuries arising out of the necessary risks or dangers of the employment. The statute before us merely shifts such liability upon the employer." It is the physical law of nature, not of government, that imposes upon one meeting with an injury, the suffering occasioned thereby. Human law cannot change that. All it can do is to require pecuniary indemnity to the party injured, and I know of no principle on which one can be compelled to indemnify another for loss unless it is based upon contractual obligation or fault. It might as well as argued in support of a law requiring a man to pay his neighbor's debts, that the common law requires each man to pay his own debts, and the statute in question was a mere modification of the common law so as to require each to pay his neighbor's debts. It is urged that the legislation before us can be upheld on the decision of the Supreme Court of the United States in *Noble State Bank v. Haskell* (219 U. S. 104, 111, 31 Sup. Ct. 186, 188, 55 L. ed. 112.) In support of the claim there is cited from the opinion the following: "It may be said in a general way that the police power extends to all the great public needs. (*Camfield v. United States*, 167 U. S. 518, 17 Sup. Ct. 864, 42 L. ed. 260.) It may be put forth in aid of



what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare." (P. 111.) It is here possible that the doctrine of these two sentences would justify the statute before us and possibly any legislation, if only supported by a sufficient popular demand, but it is both unfair and unsafe to exempt fragmentary sentences from the opinion of a court and interpret them apart from the context of the whole opinion. However that may be, the decision in the Noble Bank case is not controlling upon this court in the construction of the Constitution of our own state, and I am not disposed to accept it, at least, until it has received the approval of a majority of the court. I concur with Judge Werner that the act, as applicable to the case before us, cannot be considered as an exercise of the power of the state to regulate corporations. The act is general, not confined to corporations, and even if it were, I think its effect would be a deprivation of property not authorized by the reserved power to regulate.

As to corporations hereafter formed, the question is very different. The franchise to be a corporation is not one inherent in the citizen, but proceeds solely from the bounty of the legislature, and for that reason the legislature may dictate the terms on which it will be granted and require the acceptance of the provisions of this act as a condition of incorporation. (*Purdy v. Erie R. R. Co.*, 162 N. Y. 42, 56 N. E. 508, 48 L. R. A. 669; *Minor v. Erie R. R. Co.*, 171 N. Y. 566, 64 N. E. 454; *People ex rel. Schurz v. Cook*, 110 N. Y. 443, 18 N. E. 113; 148 U. S. 397, 13 Sup. Ct. 645, 37 L. ed. 498; *Chicago, R. I. & Pac. R. Co. v. Zerneck*, 183 U. S. 582, 22 Sup. Ct. 229, 46 L. ed. 839. Even in the case of existing corporations, the corporate existence of all those created since the Constitution of 1846 may be revoked by the legislature,

though the property rights of such corporations and their special franchises other than the one to be a corporation, can not be impaired. (Const., art. VIII, § 1; *Lord v. Equitable Life Assur. Socy.*, 194 N. Y. 212, 87 N. E. 443, 22 L. R. A. (N. S.) 420.) The property and franchise would have to be managed by the owners as partners or tenants in common, and the legislature might require as a condition of the continued right to be a corporation that before the expiration of a reasonable period the provisions of the statute should also be accepted by them. They are in the condition of a tenant at will who, when the landlord raises the rent, must either comply with his terms or, after the expiration of a reasonable time prescribed by a notice to quit, surrender his rights under the lease. But individual citizens, following the ordinary vocation of life, asking no favors of the government, whether a corporate or other franchise, but only the protection of life and property, which every government owes to its citizens, and guilty of no fault, can not be compelled to contribute to the indemnity of other citizens who, by misfortune or the fault of themselves or others, have suffered injuries, except by the exercise of the power of taxation imposed on all, at least all of the same class, for the maintenance of public charity. Of course, I am not now referring to obligations springing from domestic relations.

Cullen, Ch. J., Gray, Haight, Willard, Bartlett, Chase and Collin, JJ., concur; Cullen, Ch. J., also files an opinion, with whom Willard, Bartlett, J., concurs.

Judgment reversed, etc.

**§ 58. Argument for constitutionality of act.**—The argument of former President Roosevelt, the Wainwright Commission, The Outlook and those who have contended for the constitutionality of the New York Workmen's Compensation Law is, perhaps, best stated

by James Parker Hall, Dean of the University of Chicago Law School.<sup>4</sup> The fundamental ground on which the New York Court based its decision against the constitutionality of the act was that it authorized the taking of the property of the employer "without due process of law" in violation of Fourteenth Amendment to the Federal constitution and a similar provision in the constitution of the state. Professor Hall argues that the act does not take the property of the employer "without due process." He says:

"Carriers and inkeepers (not protected by special contract) are liable for goods destroyed without their fault; the possessors of animals must keep them from straying at their peril; the husband was absolutely liable for the torts of his wife and the master for those of his servant (within the scope of his authority), no matter how carefully the servant was selected and instructed; the person who had custody of a fire was liable for its spread, regardless of fault (until the rule was altered by statute); those who keep dangerous explosives do so at their peril; the ship is liable for the care of sick and injured sailors; persons who conduct blasting operations do so at their peril as regards trespasses caused thereby; one who digs in his land is absolutely liable for changes thus caused in the surface of a neighbor's land, no matter how unforeseeable; a landowner must keep his land free from nuisances, even those created there by strangers against his will and without his fault; in some jurisdictions one who brings on his land and keeps there anything likely to escape and do damage (like a reservoir of water) is liable therefor, even though the escape be without his fault; and one who diverts the flow of surface water may be held liable if, even without his fault, his neighbor is flooded thereby. In addition to the

<sup>4</sup> *Journal of Political Economy*, Vol. XIX, No. 8, October, 1911, pp. 698-700.

above, which, as regards the defendant, are all in principle cases of accidental injury without fault, there is the great class of injuries caused by mistake, without fault, as where one meddles with the person or property of another, reasonably and in good faith thinking he has a right to do so, when he has not. No fault of any kind can be imputed to the defendant, but he is everywhere held liable.

Statutes, too, have not infrequently imposed liabilities without fault. Owners of dogs have been made absolutely liable for damages done by them; drivers of cattle have been made liable for injuries to roads; railroads have been made liable for the unavoidable escape of fire; it has been said carriers could be made absolutely liable for injuries to passengers arising from the operation of railroads; and banks have been compelled to contribute toward each other's losses. Several state courts have held unconstitutional laws making railways absolutely liable for stock killed on the track, but a contrary view of this is apparently held by the United States Supreme Court. Similar in principle seem to be the important classes of cases where persons are liable who, though wholly without fault, fail to avoid some condition or result penalized by the law. Instances are statutes absolutely requiring milk offered for sale to meet a certain test, or railroads to have their car couplings in a safe condition. It is no defense that a cow's milk unforeseeably falls below the test, or that a coupling unexpectedly becomes disabled between stations.

In the face of so large a number of instances of liability without fault under our system of law, it can not be successfully argued that a statute takes property without due process of law merely because it imposes a new liability of this character. The question instead must be the more fundamental one: Does the statute seek

an end so unreasonable or arbitrary as not to be within the legislative discretion? or, Has it sought a legitimate end by similarly unreasonable or arbitrary means? If these questions are answered in the negative, and the statute violates no definite or historically well-settled principles of private right, it should be held to be due process. In the light of human experience during the past generation throughout the civilized industrial world, can a statute be said to be unreasonable or arbitrary that places upon the person conducting a hazardous business the risk of personal injury to those employed in it? By a system of insurance this risk, like those from fire, will at once be spread over the whole industry, added to the cost of its product, and borne by society, which also gets the benefit from the industry and its hazards.

Some of the illustrations used by the New York court in argument, if meant in full seriousness, show a failure to appreciate the principle of the statute. For instance, the court says:

"If the legislature can say to an employer, 'You must compensate your employé for an injury not caused by you or by your fault,' why can it not go farther and say to the man of wealth, 'You have more property than you need and your neighbor is so poor that he can barely subsist; in the interest of natural justice you must divide with your neighbor so that he and his dependents shall not become a charge upon the state?'"

And Chief Justice Cullen suggests that a law might as well compel a man to pay his neighbor's debts as to shift to him the risk of injury to men employed in his hazardous employment. The difference between making a business bear its own inherent risks, and making well-to-do persons divide their property with the needy generally or assume their debts is sufficiently obvious

even to the lay mind, and the use of such illustrations sensibly weakens an opinion already unconvincing.

It is impossible to believe that this decision will stand as the final interpretation of "due process of law" in American constitutions applicable to workingmen's compensation acts. As the United States Supreme Court said in 1898 regarding the meaning of this constitutional provision,

"In view of the fact that from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and particularly the new relations between employers and employés, as they arise."<sup>5</sup>

**§ 59. Reasons for upholding view of court.**—The opinions of lawyers and publicists who espouse the views of Professor Hall, and contend for the constitutionality of the New York compensation act are burdened with the assumption that there is no other remedy which is adequate and available and which the Legislature of New York might not readily adopt and at the same time come within the constitutional limitation of "due process of law," and be sound from the standpoint of economics. From the point of view of the author, herein lies the error of their reasoning and the wisdom of the constitutional limitations of the State and Federal constitutions, and the wisdom in this respect of the opinion of the Supreme Court of New York.

Good laws must rest ultimately upon sound economic principles. Such a remedy is compulsory industrial insurance for workmen which has been in operation throughout continental Europe for twenty-five years

<sup>5</sup> *Holden v. Hardy*, 169 U. S. 366, 387: In this connection consult the brief of Albert P. Thom, Report of Employer's Liability Commission of the United States, pt. 4, pp. 1281-1301. See further Hearings before the Employer's Liability and Workmen's Compensation Commission pursuant to Public Resolution, U. S. No. 45.

and has been enacted recently in Ohio, Massachusetts and Washington. Compulsory industrial insurance laws for workmen,—state or mutual,—which creates a fund through the exercise of the taxing power of the State comes within the constitutional limitation of “due process of law.” The states have the right to enact such laws in the exercise of their police powers for the protection of the health, safety and the general welfare of the public. By such laws the right of the employé to sue and of the employer to defend with his common-law defenses are appropriated. The employés are given in return compensation without regard to negligence, except willful negligence, and the employer is given in return a discharge from liability to suit, and this, without regard to fault except in cases of malicious fault.

From the standpoint of economics, it must be kept in mind that the number of employers who employ a few men and who have a small amount of capital and all of their credit invested in their business is very large. For example, in Ohio, 50 per cent. of the employers employ less than twenty men. Any remedy is insufficient which does not furnish the employés of an employer of small capital and of a few men as adequate and certain compensation as it would the employés of the great employer with many employés. A compensation act based upon compulsory industrial insurance which provides a fund through the exercise of the taxing power of the State gives the employer of a few men as equitable protection and his employés as certain and adequate compensation as a compensation act of the form of the New York Act would give the United States Steel Corporation and its employés.

Whether a law is constitutional or not, depends ultimately upon the fact that the law is supported by the preponderating will of the people of the state whose

legislature enacted the law, and whether the preponderating will of the people of a state continues to support a law or not depends upon the accuracy with which the law corrects the economic inequality which the people desire to have cured.

**§ 59a. New York General Liability Law with compensation features.**<sup>6</sup>—At the time the New York Workmen's Compensation Law was enacted in 1910, there was in existence a General Liability Law,<sup>6</sup> which contained many compensation features. Though the compensation features of this statute have rarely been invoked, the statute has not been repealed. The compensation provisions of this statute are pointed out in a later chapter on Matters Common to the Various American Compensation Acts.

<sup>6</sup> Labor Law, 1909, art. 14, ch. 36; Laws 1910, amended ch. 352.



## CHAPTER VII.

### THE MONTANA WORKMEN'S INSURANCE ACT.

Sec.	Sec.
60. Its nature and construction by the Supreme Court.	62. The constitutionality of the act.
61. Questions presented to the court.	63. The effect of the decision.
	64. Text of the Montana Insurance Act.

**§ 60. Its nature and construction by the Supreme Court.**—The Montana Workmen's Insurance Act was approved March 4th, 1909, and went into effect October 1st, 1910, and its benefits were to commence four months thereafter. This act provided for an insurance fund for the benefit of "all workmen, laborers, and employés employed in and around any coal mines or in and around any coal washeries in which coal is treated, except office employés, superintendents and general managers, in case of accidents occurring in the course of their employment." It provided for a co-operative fund, contributions thereto being made by employers on the basis of the product of their mines, and by employés on the basis of their gross earnings. Fixed sums were to be paid injured persons in case of disability, or to their surviving dependents in case the injury resulted in death. The administration of the law was committed to the auditor of the State, the act being in large measure automatic in its operation. While obligatory upon the employer and his workmen to make the payments prescribed by the law, injured workmen or their dependents might ignore the provisions of the law and sue for damages under either statute or common law.

The constitutionality of the act was finally determined by the Montana Supreme Court in *Cunningham v.*

Northwestern Improvement Co.<sup>1</sup> in 1911. In the lower court the right of the auditor to collect the assessments provided for by the act was challenged by a coal mining company and it refused to pay the sums due, whereupon the auditor brought action in the court below on an agreed statement of facts. The sole question involved was the constitutionality of the act. The act was sustained by the district court, whereupon the Northwestern Improvement Co. appealed. This appeal resulted in the reversal of the judgment of the lower court, the law being declared unconstitutional on the ground that, in permitting employes to waive their rights under the insurance act and sue an employer who had made the required contributions to the insurance fund, there was not given to the employer that equal protection of the law which is his constitutional right.

**§ 61. Questions presented to the court.**—In this case the questions considered were: 1. Can the statute be upheld as a proper exercise of the police power of the State? 2. Is the act an example of class legislation, in that it singles out one particularly hazardous employment and subjects it to burdens not placed upon other extra-hazardous employments within the State? 3. Is the right to trial by jury denied? 4. Does the system and machinery provided in the act constitute due process of law? 5. Is the contention that the provision for payment to an injured employé of his compensation in a lump sum defeats the purpose of the act, viewed as a police regulation, tenable? 6. Is the argument that the act does not differentiate between a careful and a careless employer, valid? 7. Is the claim that the act lodges judicial powers in the State auditor, valid?

**§ 62. The constitutionality of the act.**—The court sustained the constitutionality of the act in respect to

<sup>1</sup> 44 Mont. 108, 119 Pac. 554.

all of the foregoing questions except the one raised in the fourth. The court, in answering question No. 4, held the act unconstitutional because it violated the "due process of law" clause of the constitution of the United States. The court, speaking through Mr. Justice Smith, said: "It is therein contended that in reserving to the employé his right to an action at law, the act denies to the mine operator the equal protection of the laws. We have decided that the fact that actions at law are not abolished by the act is not, of itself, a sufficient reason for declaring the statute unconstitutional. We do not believe 'that for the purpose of determining the validity of the tax it is necessary to find an immediate specific benefit to the individual taxed,' as is maintained by some writers on the subject. We think we have already shown that if the act can be justified at all it must be upon a much broader principle than that above indicated. The duty to make payments as provided in section 2 is absolute and unconditional. It can be enforced by appropriate action. But after full compliance with the terms of the act, the employer is not exonerated from liability. He may still be sued and compelled to pay damages in a proper case. No provision is made for reimbursement in whole or in part. The injured employés of one operator may all resort to the indemnity fund, while those of another may elect to appeal to the courts. The result is that the employer against whom an action is successfully prosecuted, is compelled to pay twice. He has fully paid his assessments under the act and is also obliged to pay damages. This fact is so palpable as to be needless of discussion. The act in this regard is not only inequitable and unjust, but clearly illegal and void as not affording to such employer the equal protection of the laws. The Legislature of the State of Washington guarded against this contingency by abolishing all actions for negligence. (Ch. 74, Session

Laws, Washington, 1911.) The General Assembly of Maryland, in an act somewhat similar to ours (see Laws of Maryland, 1910, ch. 153) provided: 'If any suit or action be brought against any operator for or in respect of any injury or disability received by an employé while in the discharge of his duty or for death resulting therefrom \* \* \* and said operator shall appear and defend such suit or action and a judgment shall be rendered against him, he shall, after satisfying said judgment \* \* \* be entitled thereafter to deduct from the payments required to be made by him \* \* \* a sum equal to the amount of said judgment and costs.'

"The manner in which the equal protection of the laws shall be afforded to the operator is, of course, for the legislative body to determine; but some method must assuredly be provided to protect him from double payments. The act in its present form, is, in this regard, so repugnant to all ideas of equity and equality that it must, we think, appeal to every right-thinking person, on the most cursory examination, as unjust. It was to guard against such legislation as this, as we apprehend, that the framers of all American constitutions guaranteed to the citizen the equal protection of the laws."

On the question of the exercise of judicial power by the auditor it was observed by the court:

"The fact that one who has a cause of action at common law may elect to take under the act, and the suggestion that as to him the auditor may be called upon to exercise judicial power, has no persuasive force when we consider that such election is altogether voluntary, and he may resort to the courts if he so desires. If the tax provided for in the act can legally be exacted from the employer, and, as is the case, the acceptance of its benefits by the claimant ipso facto operates to release the employer from liability, it is difficult to see how the latter has any further concern in the matter

of distribution of the fund than to be assured, as the act provides he may be, that it is not paid out on improper or fraudulent claims. If the summary method of administration provided may not be resorted to, then one of the paramount reasons for this class of legislation must be entirely eliminated from consideration. It seems to us that the opinion of the Supreme Court of the United States \* \* \* effectually disposes of this question, as well as of some others which we have considered. As this opinion is already too long, however, we shall content ourselves with a single quotation therefrom: 'Though, generally, both public and private wrongs are redressed through judicial action, there are more summary extrajudicial remedies for both.' "

**§ 63. The effect of the decision.**—This decision and the earlier New York decision<sup>2</sup> establish conclusively that a compulsory workmen's industrial insurance or workmen's compensation act can not contain a provision that will give the injured worker the option of suing his employer or of accepting the compensation provided by the act.

This decision leaves Montana without an operative workmen's compensation act. However, since the court sustained all of the provisions of the law, except that giving the injured worker the right to elect to sue his employer at law as heretofore or to accept the compensations given him under the compensation act, it may be cured and made operative by an amendment which takes away this option to sue and makes it obligatory upon him to accept the compensations made and provided in the act.

**§ 64. Text of the Montana Insurance Act.**—The act is entitled an act to create a state accident insurance, and total permanent disability fund, for coal miners and

<sup>2</sup> *Ives v. South Buffalo Railway Co.*, 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162 n.

employés at coal washers in the state of Montana, and providing for the maintenance and management of the same; extending and defining the duties of the state auditor; and fixing penalties for the violation of its provisions. It provides:

Section 121. (Section 1.)—To whom act applies.—All workmen, laborers, and employés employed in and around any coal mines, or in and around any coal washers in which coal is treated, except office employés, superintendents and general managers, shall be insured in accordance with the provisions of this act, against accidents occurring in the course of their occupations.

Section 122. (Section 2.)—How fund raised—To whom paid.—All corporations, partnerships, associations or persons engaged in the business of operating any coal mine or coal washers in the State of Montana shall pay to the auditor of the State, within five days after the monthly wages at the particular mine shall have been paid, one cent per ton on the tonnage of coal mined and shipped, or sold locally, or having been mined is ready for shipment or sale during the month for which the wages were paid, and all persons mentioned in section 1 employed in and about coal mines shall allow to be deducted from their gross monthly earnings one per cent. thereof, the deduction to be made by the agent, manager, or foreman of any corporation, association, partnership, person or persons engaged in the business of operating any coal mine or coal washer, and paid to the State auditor within five days after such monthly wages have been paid.

Section 123. (Section 3.)—Agents to report tonnage mined—Contracts waiving effect of act void.—The agent, manager, foreman or accountant of any corporation, partnership, association, person or persons engaged in mining coal in Montana, shall on or before the

fifth day succeeding the pay day at his respective mine, make a report under oath to the State auditor as to the tonnage mined and subject to the payment of one cent per ton thereon; and stating the gross earnings subject to the one per cent. deduction as provided in this act, accompanied by a certified check in full for the amount of the tax provided in section 2 of this act. It shall be unlawful for any person, employer, employé, corporation, partnership, association or union to make any contract waiving, avoiding or affecting the full legal effect of this act.

Section 124. (Section 4.)—Receipts of funds by auditor—Duties—Liabilities of sureties of State treasurer—Interest.—It is hereby made the duty of the State auditor to receive all moneys as provided for in this act, and to send the proper acknowledgment to the person making such remittance. The auditor shall pay all moneys so received by him to the State treasurer, who shall keep such sums in safe custody in a distinct fund to be known as the Employers' and Employés Co-operative Insurance and Total Permanent Disability Fund. The State treasurer must invest the surplus of this fund in safe and convertible state, county or city bonds or bonds of the United States. All interest accruing from such investments shall be accredited to this insurance fund. The bond of the State treasurer shall be liable for such funds, and it shall be his duty to keep accurate accounts of the receipts and disbursements of such money.

Section 125. (Section 5.)—Payment of death claims—To whom—Duty of auditor—Personal injuries—How compensation paid.—The auditor of State shall keep full statistics of the operation of this function of his department in the event of the death by accident of an employé insured under this act, who shall have come to his death in the course of his employment and by causes

arising therein. The auditor of State upon being satisfied by adequate evidence of such death shall issue a warrant upon the State treasurer to persons dependent upon the deceased, these warrants to issue in the following order: (1) To surviving wife and child, or children, in equal shares, and if neither wife or child, or children be alive, then, (2) to surviving parents who are dependent, or partially so, upon the deceased; if none, then (3) to such other relatives of the deceased as survive him and are dependent upon him, in the sum of three thousand (\$3,000) dollars.

A workman receiving injuries which permanently incapacitate him from the performance of work shall receive a compensation monthly, not to exceed one dollar (\$1.00) a day for each working day. Compensation for permanent injury shall not be allowed until after the expiration of twelve weeks from the time such injuries were sustained, provided that the medical practitioner examines and pronounces the injury as being permanent, compensation may then be allowed from commencement of disability. The auditor of State, however, may, when in his judgment he deems it advisable, use so much of the funds as is necessary in procuring a medical practitioner, for the purpose of examination or treatment under this act, for such injuries as herein mentioned compensation shall continue during disability, or until settlement is effected as provided for in section 9 of this act. Total or permanent disability shall consist of the loss of both legs or both arms, the total loss of eyesight or paralysis, or other conditions incapacitating him from work, caused by accident, or injuries received during employment as specified by this act; provided that if death, as a result of the injury, ensues at a period not longer than one year from date of accident the sum of three thousand dollars (\$3,000.00) shall be paid the de-



ceased workman's dependents as hereinbefore provided. The representatives of a foreigner, except the widow or dependent children, who were not living within the country at the time of the accident, shall have no claim for the compensation provided for in this act. Such foreign person shall file his foreign address, if married, with the officer of his employer with whom he is employed and duplicate thereof with the State auditor, giving his wife's name and dependent children, and such other identification as may be required by the auditor of State. Loss of any limb, or eye, caused by accident to a workman while employed as provided for in this act, shall be compensated for in the sum of one thousand (\$1,000.00) dollars, provided, that in the event there shall be no funds available in the fund to pay the auditor's warrant when drawn, the same shall draw interest out of the fund at the rate of ten per cent. per annum until such warrant is called for payment by the treasurer, which shall be as soon as the fund is sufficient to pay the same with its interest then due.

Section 126. (Section 6.)—Monthly payments—Applications for.—Where a workman is entitled to monthly payments under this act, he shall file with the auditor of State his application for such, together with a certificate from the county physician of the county wherein he resides, attested before a notary public.

Section 127. (Section 7.)—Fraudulent claims—Duty of auditor.—If any person or persons, company or corporation who is then paying into this insurance fund shall believe that any person or persons are obtaining, or have made application to obtain benefits hereunder improperly or fraudulently, and shall file his written request that such person's claim be investigated, the State auditor must upon the receipt of such request, request the secretary of the State Board of Health to make an

examination for the purpose of this act and his certificate as to the condition of the person or persons with reference to their rights to benefit under this act shall be conclusive evidence as to his condition.

Section 128. (Section 8.)—Claimant refusing to submit to examination—Effect.—If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation under this act shall be suspended until such examination takes place, and shall absolutely cease unless he submits himself for an examination within one month after being required to do so.

Section 129. (Section 9.)—Monthly payments—Redemption by lump sum—Amount.—Where any monthly payment has been made to a workman for any period whatever, the liability under this act, may on the application by, or on behalf of the workman, be redeemed by the payment of a lump sum, which in no instance shall be in excess of the amount specified as death indemnity, and all monthly payments made prior shall be deducted from such settlement.

Section 130. (Section 10.)—Annual report of auditor—Plenary power to adjust claims.—The auditor of State shall report in January of each year to the Governor of the experience and business of this function of his department, and shall have plenary power to determine all disputed cases which may arise in its administration not herein provided for, and to recommend in his report the rates of premiums necessary in order to preserve such fund, and shall order paid such indemnification as herein provided. He shall have power to define the insurance provisions of this act by regulations not inconsistent therewith and shall prescribe the character of the monthly or other reports required of the parties liable hereunder and the character of the proofs of deaths, or

to total permanent disability, and shall have power to make all other orders and rules necessary to carry out the true intent of this act.

Section 131. (Section 11.)—Release of employer—Benefits exempted—Suit—Forfeiture of benefits.—No money paid or payable in respect of insurance or monthly compensation under this act shall be capable of being assigned, charged, taken into execution or attached, nor shall the same pass to any other person by operation of law; and the acceptance of pecuniary benefit under the provisions of this act shall operate to release the person or persons, corporations, partnerships, or associations causing such injuries or death for which benefits are so claimed, who shall have paid the assessment provided in section 2 of this act, and also the employer, officers and agents thereof from all liability and claim arising from such injuries or death. The commencement of a suit to recover for such injuries or death shall operate as a forfeiture of the right to benefit under this act.

Section 132. (Section 12.)—Violations of provisions of act—Penalties.—A manager, agent, foreman, accountant, person or persons who represent any corporation, partnership, association, person or persons, engaged in the mining or managing of any coal mines or coal washers in Montana, or person or persons liable for the payments herein provided for who shall violate the intent of this act by inaccurate reports of tonnage of coal produced by them, or the earnings of employes in their employ or who in any manner hinders or obstructs the auditor of State in ascertaining facts bearing upon any case provided for in this act or who may refuse correctly to make out such reports as are required by this act, or as requested by the auditor of State, or submit to its provisions, when liable therefore, or who shall

fraudulently obtain benefits hereunder shall be fined for each offense the sum of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars and imprisonment in the county jail for a period of not less than one month nor more than six months, or by both such fine and imprisonment. The proceeds of all fines shall be forwarded to the State treasurer and by him credited to the insurance fund.

## CHAPTER VIII.

### AN ANALYSIS OF THE PRINCIPLES OF THE LEGAL BASIS OF COMPULSORY INSURANCE AND COMPENSATION LAWS.

- | Sec.  | Sec.   |
|---|--|
| 65. Introductory.   | 81. Analogous decisions—Whisky cure cases.   |
| 66. The nature and remedial provisions of insurance laws.                                   | 82. Analogous decisions—Farmer's fund cases.   |
| 67. Nature of the obligation imposed.   | 83. These laws an exercise of taxing power—Attributes and limitations of taxing power.                           |
| 68. Nature of the obligation imposed—German view.   | 84. Subjects of taxation.  |
| 69. The relationship between employer and employé under common-law and liability acts.      | 85. Similarity of attributes of general taxation and eminent domain.   |
| 70. The relationship between employer and employé under insurance and compensation acts.    | 86. Necessity that purpose of tax be a public purpose.   |
| 71. Validity as to employer—Deprivation of defenses.  | 87. The public purpose for which taxes may be levied.  |
| 72. Validity as to employé.   | 88. Public purpose determined by Legislature.  |
| 73. Validity as to employé—Vested rights in remedies withdrawn.                             | 89. Necessity of benefit as condition to right to tax.   |
| 74. Validity as to the State—Public interest.   | 90. Necessity of return of benefit to one paying to special fund.  |
| 75. The problem of industrial insurance.  | 91. Whether conditions of equality and uniformity are satisfied in insurance and compensation acts.              |
| 76. Whether these laws infringe constitutional limitations.                                 | 92. Whether contract clauses of constitutions are violated—Uniform operation of laws.                            |
| 77. Insurance acts sustainable against constitutional objections under analogous decisions. | 93. Insurance and compensation laws a proper exercise of police powers.  |
| 78. Analogous decisions—Application to insurance acts.                                      | 94. Whether laws open to objection of lack of uniformity of operation and equality of protection—Classification. |
| 79. Analogous decisions—Bank depositors' guarantee acts.                                    |  |
| 80. Analogous decisions—Sheep-dog fund cases.   |  |

Sec.	Sec.
95. Legislature in its enactments limited only by State Federal constitutions.	compensation acts whether executive or judicial—Due process.
96. Nature of administration of compensation acts.	98. Deprivation of right to trial by jury.
97. Nature of administration of	99. Whether act may be optional.

**§ 65. Introductory.**—It is the purpose of this chapter to present and discuss the objections most frequently urged against insurance and compensation laws when their validity is called in question in courts of law.<sup>1</sup>

**§ 66. The nature and remedial provisions of insurance laws.**—Workmen's insurance acts greatly resemble each other in their provisions. The Ohio act, which may be taken as a type of these laws, provides:

(1) That all workmen injured shall be compensated at the rate of 66 2-3 per cent of his loss of wages for not longer than 300 weeks, and not more than \$12 per week; in case of death where there are dependents, the compensation shall not be less than \$1,500 nor exceed \$3,400, plus doctor bills not to exceed \$200 and funeral expenses to a maximum amount of \$150; and in no case shall the compensation for any injury exceed \$3,400, except in the case of total disability. (2) That any employer of five or more persons shall pay monthly into the state fund, the premium based upon the pay roll and hazard of his business, sufficient to pay his pro rata share of the compensation awarded to workmen against the fund. (3) That every employer of five or more persons who fails to pay said premiums shall not avail himself of any of

<sup>1</sup> The matter for this chapter is largely founded on the brief used by the author in his presentation of the case of the Ohio Industrial Insurance law in behalf of the State before the Ohio Supreme Court. It is thought to cover all questions that have been raised against these laws in all the states where their validity has been litigated.

the so-called common-law defenses in case he is sued by a workman who is injured while in his employ. (4) That every workman must accept the compensation provided by the act, in lieu of all rights and remedies heretofore existing, excepting the case where he may be denied any relief whatever, or where he may be injured through a willful act of the employer, or through the employer's violation of a statute or ordinance, in which case he may elect to sue his employer at law or take under the compensation act. (5) That in case a workman, covered by the act, is totally disabled he shall be compensated at the rate of 66 2-3 per cent of his average weekly wage, in no case at less than \$5 per week, nor at more than \$12 per week, and the compensation shall be paid as long as total disability lasts.

**§ 67. Nature of the obligation imposed.**—The relation imposed by these laws is purely economic in character as distinguished from the creation of a new right in the employé sounding in tort. The new obligation of the employer to his employés is rather a wage obligation in the nature of an undertaking thrust upon the employer, as a part of the contract of employment, to become a party to an insurance policy created by law and to be entered into as additional consideration for services rendered by the employé. The obligation falls within the domain of contract and thus involves a sphere of constitutional law pertaining to the subject of the regulation of contracts.

The true theory in all cases is that the compensation is in fact a tax levied by the state, both upon the employer and employés, and accepted by the employé class for the public welfare. This is necessarily so, for were the new obligation of the employer deemed to be created with the sole object of establishing in the employé a new private right and remedy in substitution of

his former right to sue in tort for damages, then an industrial insurance law would be as unfair to the employé as to the employer. This proposition is true, because in lieu of a possible opportunity formerly belonging to the injured employé to be made whole in a sum for damages fully commensurate with his peculiar loss, he would be compelled, under an insurance or compensation act to accept a stipulated amount admittedly having no relation to his injury, but measured on the basis of his relative economic position in the community, viz.:—the amount of his wage. This is not a just basis to compensate the employé for his injury, if his new right is to be classified in the same category in which his old right belongs, viz.:—a means to redress a private wrong. The reason for such a law must be to require the employé to accept, against his former precarious right to adequate damages, the entirety, not only for himself, but also for all members of his class, of receiving in case of injury, a stipulated sum computed not independently as to each party injured on the basis of loss peculiar to his own personal injury but relatively as to all in accordance with their respective earning capacities. Hence its sole justification must be the public welfare, and whatever its form be it must in substance result as to the parties involved in the arbitrary levying and administration of a tax fund.

On the above theory it is argued that the positions of the employer and employé should be so altered that no new statutory privity of relationship be created between them, as was the case under the New York law,<sup>2</sup> but rather that each be required independent of the other to perform a new duty toward the state, namely, the employer and employé, each, by paying an adequate

<sup>2</sup> Ives v. South Buffalo R. Co., 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162n.



tax to the state, and the employé by surrendering a chose in action to the state; that these respective duties, however, can be constitutionally required of each only upon some direct compensatory return of an economic character moving to each. Distinction is here made between a law (for instance the New York statute) such as gives in fact a right in A to appropriate directly by new right and remedy the property of B and a law which leaves A and B in respect of their personal relations as they were before, but requires each for the needs of the public welfare, and in exchange for specific benefits respectively received, to surrender to the state certain rights and likewise to look to a state agency alone for the returning benefits.

Another limitation also inheres in this theory of the appropriation of the property rights of the two classes involved, namely, that since the tax is not levied on all in the state but that certain classes of citizens are alone selected a corresponding benefit or return must be traced to them for their property and rights to be so appropriated. This constitutional limitation requires that any scheme of industrial insurance or workmen's compensation shall be what it purports to be, namely, an actual readjustment of the social relations of the classes involved in it by making such scheme a substitute for and exclusive of all other present methods of protecting personal injuries; for if there exist in any plan of compensation the recognition of the right of the employé to either exercise his option to sue at law for personal injuries, or to take his insurance, by this very token is it declared that the intention of such a law is not to bring about such an economic reform, for still would there exist all the evils now inherent in the present method of redressing personal injuries; in consequence such a plan would disclose, as was suggested by the New York Court of Appeals in the Ives

case,<sup>3</sup> but the creation of a new remedy in the employé, additional to those now vested in him and unconstitutional in character, to redress a private wrong. The very essence of any scheme of industrial insurance or workmen's compensation to be constitutional requires that it be exclusive in character. The tax levied must be for a public purpose and the act to be valid must be a proper exercise of the police power.

Upon the assumption that such taxation would be for a public purpose, the brief then considers the limitations prescribed by the Seventh Amendment, being that provision of the Constitution which preserves the right of trial by jury in suits at common law. All attempts to demonstrate that in so far as a state agency is concerned any controversies arising between such agency and any of the parties of the tax or as to the distribution of the same, would not fall within the scope of the seventh amendment and may therefore be adjudicated by such statutory remedy or summary procedure as the state may prescribe.

**§ 68. Nature of the obligation imposed.—German view.**—The American insurance acts are adaptations of the German industrial insurance law against accidents, enacted in 1884, which all European countries have adopted in a more or less modified form. Dr. Laband, in analyzing industrial insurance legislation of Germany and other European countries, uses language which is equally applicable to the American acts.<sup>4</sup>

He says: "The Imperial legislation starts from this idea—that the undertaker of an enterprise who employs workmen in order to appropriate to himself the economic value of the fruits of their labor owes them not only the agreed wages for this labor, but ought

<sup>3</sup> *Ives v. South Buffalo R. Co.*, 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162n.

<sup>4</sup> See *Droit Public de l'Imperial Allemand*, IV, 12.

also to bear with them the risks of accident resulting from this labor. This conception has not taken the shape of a principle of private law which governs the relations resulting, in a judicial sense, from the labor contract; it has become one of the tasks laid upon the state to take care of the victim of an industrial accident, or of those he leaves behind him; and this task is accomplished with the means and according to the forms dictated by public law. The right of the workman to the solicitude of the state is therefore wholly independent of an agreement relating to his work and the clauses it contains; he enjoys this right even when there is no agreement of this sort and this convention can neither modify this or deprive him of it. So, this right is not founded on a fault committed by the master or any of his employés, and even a fault of the workman does not affect it at all unless he has intentionally caused the accident. The obligation to aid the workman is not a legal obligation, or what is called a 'state obligation' of the master towards his workmen, for master and workmen are not set against one another like debtor and creditor, and they are powerless to vary the right of one to aids and the obligations of the other to give them. The workmen or their survivors receive the aids which come to them by an intermediary that the Empire or the State has delegated to perform this duty, an intermediary who has with them no private legal relation, who simply performs a public administrative function, confided to him by imperial order, when he determines the indemnity to be given to the workmen or effects its payment."

§ 69. The relationship between employer and employee under common law and modern liability acts.— There is this distinction between the legal principles applicable to the common law of torts and the more recent employer's liability acts and those applicable to

industrial insurance and compensation acts. The body of law applicable to the former pertains entirely to the redress of private wrongs. The liability results in the payment of damages to the employé intended to be commensurate with and to reimburse him for the injury suffered. The sole object of laws of this form is to regulate private rights, to readjust the relationship between individuals and to restore the parity presumptively existing between them.

**§ 70. The relationship between employer and employe under insurance and compensation acts.**—The obligations of industrial insurance and workmen's compensation acts accrue from contingencies not dependent upon or within the control of the parties and thus have no relationship whatever to the conduct of the parties; hence these obligations are not based upon wrongs. It follows then that they must pertain to the subject of government regulations, and are in the nature of economic provisions taking the form of indirect taxation levied to regulate occupations, for on what other basis would the government be justified in writing into the labor contract against the will of the parties, an insurance policy? Were this not so, industrial insurance or workmen's compensation would be, without basis of justice or equity from the standpoint of both the employé and employer, for the theory of such laws is that compensation is not to be commensurate with injury but is based upon wages, thereby substituting for the former obligations based upon tort, which offered damages commensurate with injury, a purely arbitrary sum. Such a scheme has no relation to the adjustment of private wrongs. If it be justifiable it must be on the sociological theory of the right of the state to levy a tax for the purpose of protecting from an economic standpoint, the community as a whole. It follows, therefore, whether compensation be paid by the state

as insurance in the form of a tax levied upon all citizens of the state, or be paid through the intermediary of assessments levied by industrial associations, or be paid in the form of compensation from the employer to the employé, it has all the inherent attributes of money raised by the appropriation of private rights in the form of a tax for the benefit of the common good.<sup>5</sup>

It would, therefore, seem that in an analysis of constitutional limitations it would be futile to look for analogy to the decisions which pertain to the regulation of the private relations between the parties. Hitherto, for this purpose there have been drawn into discussion of this subject, cases which hold a statute constitutional making a railroad company liable for injury though without fault;<sup>6</sup> cases holding statutes constitutional which make railroad companies responsible for fires set by engines though without fault;<sup>7</sup> cases holding subcontractors' lien laws constitutional,<sup>8</sup> or such familiar illustrations as the ancient law of deodands or the liability of the husband for the tort of the wife, or the liability of the master for the acts of his servant. But it is to be noted that all the statutory or common law duties interpreted in these decisions pertain solely to the protection of private rights.

**§ 71. Validity as to employer—Deprivation of defenses.**—It is clearly within the power of a State Legislature to deprive the employer of the three so-called common law defenses, to-wit, the defense of the fellow servant rule, the defense of the assumption of the risk and the defense of contributory negligence.

This proposition is amply sustained by authority. The supreme judicial court of Massachusetts, addressing

<sup>5</sup> R. J. Carey Brief on the power of Congress in respect of Industrial Insurance and the Law of Workmen's Compensation.

<sup>6</sup> Chicago, etc., R. Co. v. Zernicke, 183 U. S. 582, 46 L. ed. 339.

<sup>7</sup> St. Louis, etc., R. Co. v. Mathews, 165 U. S. 1, 41 L. ed. 611.

<sup>8</sup> Jones v. Great Southern, etc., Co., 83 Fed. 370.

itself to this matter in a case involving the compensation law of that state, said:

"The rules of law relating to contributory negligence and assumption of the risk and the effect of negligence by a fellow servant were established by the courts, not by the Constitution, and the Legislature may change them or do away with them altogether as defenses (as it has to some extent in the employer's liability act) as in its wisdom in the exercise of powers intrusted to it by the Constitution it deems will be best for the 'good and welfare of this commonwealth.' See *Missouri Pacific Railway v. Mackey*, 127 U. S. 205, 32 L. ed. 107; *Minnesota Iron Co. v. Kline*, 199 U. S. 593, 50 L. ed. 322. The act expressly provides that it shall not apply to injuries sustained before it takes effect. If, therefore, a right of action which has accrued under existing laws for personal injuries constitutes a vested right or interest, there is nothing in the section which interferes with such right or interests. The effect of the section is not to authorize the taking of property without due process of law, as the Court of Appeals of New York held was the case with the statute referred to in the preamble to the questions submitted to us, and which in consequence thereof was declared by that court to be unconstitutional. *Ives v. South Buffalo Railway*, 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. (N. S.) 162n. Construing the section as we do and as we think that it should be construed, it seems to us that there is nothing in it which violates any rights secured by the State or Federal Constitutions."<sup>9</sup>

To a similar effect is a late decision of the Wisconsin Supreme Court:

"The two defenses [the defense of the assumption of risk and negligence of a fellow servant] which the

<sup>9</sup> In re Opinion of Justices, 209 Mass. 607, 96 N. E. 308.

legislature has thus attempted to take away are not entrenched behind any express constitutional provision, nor were they originally created by legislative action. They were both evolved by the courts. \* \* \*

"It is frankly admitted by appellant that it is within the legislative power to make this change with regard to the hazardous trades, but not with regard to what are called the non-hazardous trades. But why not? There are, of course, some occupations which are exceptionally hazardous, and it may well be that it would be within legislative discretion to classify these very hazardous occupations and remove the defenses to them, while retaining them as to others less hazardous. Indeed, that very thing has been done and has been approved by the courts in this and many other states, especially in the case of railroads and to some extent with other industries. *Minnesota Iron Co. v. Kline*, 199 U. S. 593, 26 Sup. Ct. 159; 50 L. ed. 322; sec. 1816, Stats. (1898), as amended by ch. 254, Laws of 1907; *Kiley, etc., C. M. & St. P. R. Co.*, 142 Wis. 154, 125 N. W. 464; sec. 1636j, Stats. (1898); sec. 1636jj, Stats. (ch. 303, Laws of 1905).

"But because there is room for classification it does not follow that legislation without classification is unconstitutional. There are hazards in all occupations; indeed they follow every man from the cradle to the grave. What constitutional requirement, either express or implied, clothes these court-made defenses with exceptional sanctity as to the less hazardous industries, and wards off from them the sacrilegious hand of the legislature? We are referred to none, and we know of none. It is admitted in the *Ives* case, *supra* that both the fellow-servant defense and the contributory-negligence defense, being of judicial origin may be changed or abolished by the legislature. See also the opinion of the Justices of the Massachusetts Supreme Court on the

Personal Injuries act of 1911, 96 N. E. 308. We see absolutely no ground for the contention that these defenses may be lawfully abrogated as to the more hazardous industries, but must be forever held sacred as to the less hazardous industries. There may be a less persuasive reason for the change in the case of the latter class of industries, but this does not deprive the Legislature of the power to make it."<sup>10</sup>

**§ 72. Validity as to employe.**—Workmen's insurance and compensation acts take away from the employé his common-law right of action against his employer for nonfatal injuries caused by the employer's negligence. As to fatal injuries, a cause of action against an employer was unknown to the common law, is a statutory creation, and consequently (since the Constitution of the state contains no inhibition) is subject without question to repeal by the Legislature. The proposed act carefully saves any right of action on account of an injury received prior to the date named for it to become operative, upon the employers and employés affected by it. The question involves not the taking away of a vested right of action, but the changing of the law in respect of expectancies and possibility of action in which the party has no present interest.

At an early day the Legislature of Pennsylvania passed a statute abolishing the doctrine of respondeat superior in the case of persons injured on or near railroads and not in the employ of the railroad company. Of this law the Supreme Court said: "The law says that the legal principle of respondeat superior shall have no place in this particular relation; that as a matter of public policy for the good of all, those who voluntarily venture into employment alongside of the servants of a

<sup>10</sup> *Borgnis v. Falk*, 147 Wis. 327, 133 N. W. 209. See also *Ives v. South Buffalo R. Co.*, 201 N. Y. 271.



railroad company shall have just the same remedies for injuries happening in the employment that these have, and none other. In doing this no fundamental right of the person thus voluntarily venturing is cut off or struck down. The liability of the company for the acts or omission of others, though they be servants, is only an offspring of the law. The negligence which injures is not theirs in fact, but is so only by imputation of law. The law which thus imputes it to the company for reason of public policy can remove the imputation from the master and let it remain with the servant whose negligence causes the injury.”<sup>11</sup>

The Supreme Court of the United States had before it the same statute and sustained it, saying: “If it be conceded, as contended, that the plaintiff in error could have recovered but for the statute, it does not follow that the legislature of Pennsylvania, in preventing a recovery, took away a vested right or a right of property. As the accident from which the cause of action is asserted to have arisen occurred long after the passage of the statute, it is difficult to grasp the contention that the statute deprived the plaintiff in error of the rights just stated. Such a contention in reason must rest upon the proposition that the state of Pennsylvania was without power to legislate on the subject,—a proposition which we have adversely disposed of. This must be, since it would clearly follow, that if the argument relied upon were maintained, that the state would be without power on the subject. For it can not be said that the state had authority in the premises if that authority did not even extend to prescribing a rule which would be applicable to conditions wholly arising in the future.”<sup>12</sup>

A right of action of a third person against a master

<sup>11</sup> Kirby v. Pennsylvania R. Co., 76 Pa. 506.

<sup>12</sup> Martin v. Pittsburg, etc., R. Co., 203 U. S. 284, 51 L. ed. 184, 27 S. Ct. 100, 8 A. & E. Ann. Cas. 87.

for negligence of his servant was a common-law right of action.<sup>13</sup>

§ 73. **Validity as to employe—Vested rights in remedies withdrawn.**—"Vested rights," says Judge Cooley, "can not be taken away by legislative enactments, but a right can not be considered a vested right unless it is something more than such a mere expectation as may be based upon the anticipated continuance of the present general laws. The Legislature may change such general laws constitutionally except as to a right of interest that may have already accrued or become perfected. \* \* \* In organized society every man holds all he possesses, and looks forward to all he hopes for through the aid and under the protection of the laws; but as changes of circumstances and of public opinion, as well as other reasons affecting the public policy, are all the while calling for changes in the laws, and as these changes must influence more or less the value and stability of private relations and strengthen or destroy well-founded hopes, and as the power to make very many of them could not be disputed without denying the right of the political community to prosper and advance, it is obvious that many rights, privileges, and exemptions that usually pertain to ownership under a particular state of law, and many reasonable expectations, can not be regarded as vested rights in any sense." Says the Supreme Court of the United States in *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77: "A mere common-law regulation of trade or business may be changed by statute. A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of

<sup>13</sup> *Middleton v. Fowler*, 1 Salk. 282; *Blackstone's Com.* 431; *Gray v. Portland Bank*, 3 Mass. 364, 3 Am. Dec. 156; *Harlow v. Humiston*, 6 Cow. 189.

municipal law, and is no more sacred than any other. Rights of property which have been created by the common law can not be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will or even at the whim of the legislature, unless prevented by constitution limitations. Indeed the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to changes of time and circumstances.”<sup>14</sup>

Some of the states in their Constitutions, in substance, contain the provision of Magna Charta, that “every man shall have a remedy for injury done him in person, property, or reputation.” Nevertheless, the principle last above stated has been sustained in states having such a constitutional provision.<sup>15</sup>

“Conceding that a cause of action for personal injuries is property, the cause of action, i. e., the property must exist before one can be deprived of it at all. A statute which abrogates a cause of action for personal injury before such cause of action has arisen or before the injury occurs, or requires certain things to be done by the injured party as conditions precedent to a cause of action, does not deprive the injured party of his property rights without due process of law. \* \* \* In other words, the legislature may create a right of action which never existed, if in doing so it does not affect rights which vested prior thereto. A party injured after the legislature has taken away the right of action for personal injuries can no more complain of it than a party against whom a right of action is given for an injury resulting in death, can of such a legislative enactment.

<sup>14</sup> *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77. Applied to the relation of master and servant in *Vindicator Consol. Gold Min. Co. v. Firstbrook*, 36 Colo. 498, 86 Pac. 313, 10 A. & E. Ann. Cas. 1108.

<sup>15</sup> *Templeton v. Linn County*, 22 Ore. 313, 51 L. R. A. 730, 29 Pac. 795; *William v. Galveston*, 41 Tex. Civ. App. 63, 90 S. W. 505.

For the one party is no more injuriously affected by such legislation than the other. In the one case what was before actionable ceases to be so; in the other, what was not before actionable becomes so."<sup>16</sup>

**§ 74. Validity as to the State—Public interest.—**

Workmen's insurance and compensation acts generally provide for the creation of a new department for their administration, the expenses of which are borne by the state. The usual limitation on the right of the state to expend the moneys of the state is that the expenditure shall be for a public purpose. It is clear that it is a public purpose to pay the salaries and defray the office, traveling and court expenses of state officials, and other expenses of a state department charged with the administration of a branch of the police power of the state, just as the state bears without question the expense of administration of other departments, e. g., the railroad commission, mine, factory, grain and hotel inspection, all operating under the police power.

**§ 75. The problem of industrial insurance.—**The inquiry at the outset of the discussion would seem to be: Has the state the power to regulate industries for the purpose of protecting the economic welfare of the community by levying a tax in the form of an insurance obligation upon the same for the benefit of the employes injured while employed in such industries? And again, if the state has a right to levy such a tax may it as part of the private rights appropriated by it for the benefit of the common good, take from the employé the right now belonging to him to redress his personal injury caused by the default of his employer by recovering damages from the latter?

<sup>16</sup> *Sawyer v. El Paso, etc., R. Co.*, 49 Tex. Civ. App. 106, 108 S. W. 718.

**§ 76. Whether these laws infringe constitutional limitations.**—The insurance and compensation acts are generally contested on the ground that they are violative of recognized constitutional limitations, in that they authorize the taking of property without due process of law, they lack uniformity of operation, they curtail unlawfully the administration of judicial authority, they authorize the taking of private property for private use, they authorize the taking of private property for public use, they delegate legislative powers, they impair the obligation of contracts between employer and employé, they amount to an unreasonable exercise of the police power.

**§ 77. Insurance acts sustainable against constitutional objections under analogous decisions.**—It is believed that insurance acts are already well grounded as against the foregoing constitutional objections in four distinct lines of cases in American jurisprudence. These cases are (a) The bank depositors guarantee act cases; (b) The sheep-dog law cases; (c) The cases which justify the enactment of a law which authorizes the creation of a fund to be disbursed by a state commission in the erection and operation of a state asylum for inebriates; (d) The cases which uphold statutes imposing a liability upon fire insurance agents, of the nature of a tax, based upon the amount of insurance effected by them, for the creation of a fund to care for and cure sick and injured firemen.

**§ 78. Analogous decisions—Application to insurance acts.**—Each class of these four lines of cases is an example of the police power of the states to create a fund by taxation for the protection of the health, safety and general welfare of classes of citizens and the general public. The rule is that an ulterior public advantage may justify a comparatively insig-

nificant taking of private property for what, in its immediate purpose, is a private use.

The principles involved in the New York Compensation Act do not fall within this rule. There the removal of the defenses of the employer, and making him personally liable for any sum from a few dollars to \$3,000.00 in cases where heretofore he was not liable at all, so to speak, taking his property in chunks for which heretofore he was not liable at all and allowing the employé to choose to take under the new act, or to sue under the old liability or common-law, is taking property without the process of law.

This line of cases authorizes the state legislatures to provide for summary methods of collecting and distributing the several funds through the executive and administrative arms of the state, in a manner similar to that provided by the insurance and compensation acts through the Liability Board of Awards.

**§ 79. Analogous decisions—Bank depositors' guarantee acts.**—That the foregoing constitutional limitations are safely guarded is borne out by reference to the decisions of the Supreme Court of the United States in the bank depositors guaranty cases.<sup>17</sup> In these cases state legislatures required the creation of funds for the purpose of protecting depositors in insolvent banks. In Oklahoma the statute created a board and directed it to levy on every bank existing under the laws of the state an assessment of a certain per cent. of the bank's average daily deposits, with certain deductions, for the purpose of creating a depositors' guaranty fund. Said Mr. Justice Holmes:

“We must be cautious about pressing the broad

<sup>17</sup> *Noble State Bank v. Haskell*, 219 U. S. 104, 55 L. ed. 112, 31 Sup. Ct. 299; *Shallenberger v. First State Bank*, 219 U. S. 114, 31 Sup. Ct. 189, 55 L. ed. 117; *Assaria State Bank v. Dolley*, 219 U. S. 121, 31 Sup. Ct. 189, 55 L. ed. 123.

words of the 14th amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guarantees in the Bill of Rights. They more or less limit the liberty of the individual, or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it is often difficult to mark the line where what is called the police power of the states is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the law-making power.

"The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. And while we should assume that the plaintiff would retain a revisionary interest in its contribution to the fund so as to be entitled to a return of what remained of it if the purpose were given up (see *Danby Bank v. State Treasurer*, 39 Vt. 92, 98), still there is no denying that by this law a portion of its property might be taken without return to pay debts of a failing rival in business. Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place, it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. *Clark v. Nash*, 198 U. S. 361, 49 L. ed. 1085, 25 Sup. Ct. 676, 4 A. & E. Ann. Cas. 1171; *Strickley v. Highland Boy Gold Min. Co.*, 200 U. S. 527, 531, 50 L. ed. 581, 583, 26 Sup. Ct. 301; 4 A. & E. Ann. Cas. 1174; *Olfield v. New York, N. H. & H. R. Co.*, 203 U. S. 372, 51 L. ed. 231, 27 Sup. Ct. 72; *Bacon v. Walker*, 204 U. S. 311, 315, 51 L. ed. 499, 501, 27 Sup. Ct. 289. And in the next, it would seem that there may be other cases be-

sides the every-day one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. See *Ohio Oil Co. v. Indiana*, 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. 576, 20 Mor. Min. Rep. 466. At least if we have a case within the reasonable exercise of the police power, as above explained, no more need be said.

"It may be said in a general way that the police power extends to all the great public needs. *Camfield v. United States*, 167 U. S. 518, 42 L. ed. 260, 17 Sup. Ct. 864. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If, then, the legislature of the state thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it. Even the primary object of the required assessment is not a private benefit as it was in the cases above cited of a ditch for irrigation or a railway to a mine, but it is to make the currency of checks secure, and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand. The priority of claim given to depositors is incidental to the same object and is justified in the same way. The power to restrict liberty by fixing a minimum of capital required of those who would engage in banking is not denied. The power



to restrict investments to securities regarded as relatively safe seems equally plain. It has been held, we do not doubt rightly, that inspections may be required and the cost thrown on the bank. See *Charlotte, C. & A. R. Co. v. Gibbes*, 142 U. S. 386, 35 L. ed. 1051, 12 Sup. Ct. 255. The power to compel beforehand, co-operation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end. *Gundling v. Chicago*, 177 U. S. 183, 188, 44 L. ed. 725, 728, 20 Sup. Ct. 633. So far is that from being the case that the device is a familiar one. It was adopted by some states the better part of a century ago, and seems never to have been questioned until now. *Danby Bank v. State Treasurer*, 39 Vt. 92; *People v. Walker*, 17 N. Y. 502. Recent cases going not less far are *Lemieux v. Young*, 211 U. S. 489, 496, 53 L. ed. 295, 300, 29 Sup. Ct. 174; *Kidd, D. & P. Co. v. Musselman Grocer Co.* 217 U. S. 461, 54 L. ed. 839, 30 Sup. Ct. 606."

**§ 80. Analogous decisions—Sheep-dog fund cases.—**

Many states, notably Ohio, Illinois, Indiana, Kentucky, Michigan and Massachusetts, exercising the police power for the promotion of the sheep industry and public welfare, have enacted statutes imposing a tax or license upon dogs in a stated sum, collecting the same from the owner, placing the collections in a public fund, and distributing the same through state officers in payment of damages to owners of sheep killed by dogs. These statutes have been universally upheld by the courts.

The Ohio act was attacked as being an unconstitutional exercise of the taxing power of the state and an

unreasonable exercise of the police power. The court said in sustaining this law:

"While the dog as a species, possesses many valuable traits which by some are denominated virtues, it is nevertheless known of all men, that he possesses vicious traits which are especially inimical to the important industry of raising sheep and wool. If the government were powerless to protect this industry from the ravage of dogs, it would indeed be important to protect its citizens in the enjoyment of property, than which none other is more essential to the public welfare. But such power is unquestionably vested in the general assembly as a police power, and, in the judgment of the general assembly a per capita tax on dogs has been deemed a means of securing the necessary protection to sheep owners; and, as the choice of means was within the power and discretion of the general assembly, its judgment is not subject to judicial control. The original statute on this subject (which has been, in substance transferred to Revised Statutes above quoted) (passed May 5, 1877, 74 Ohio L. 177) was entitled 'An Act for the protection of wool growers and the confiscation of dogs,' a subject not only within the police powers of the general assembly, but one deserving of its consideration.<sup>18</sup>

### § 81. Analogous decisions—Whisky cure cases.—

The Supreme Court of Minnesota sustained an act to establish a fund for the foundation and maintenance of an asylum for inebriates, requiring all sellers of liquors to pay ten dollars a year to the state treasurer, through the county treasurers, in addition to the usual license, the fund to be disbursed by a state commission in the

<sup>18</sup> *Holst v. Roe*, 39 Ohio St. 340, citing *Van Horn v. People*, 46 Mich. 183; *Cole v. Hall*, 103 Ill. 30; *Mitchell v. Williams*, 27 Ind. 62; *McGlone v. Wornock*, 129 Ky. 274, 111 S. W. 688; *Blair v. Forehand*, 100 Mass. 136.

erection and operation of a state asylum for inebriates. The court in its opinion points out that the act is an exercise of the police power upon a subject clearly within that power, saying:

“This act regards the traffic as one tending to produce intemperance, and as likely, by reason thereof, to entail upon the state the expense and burden of providing for a class of persons rendered incapable of self-support, the evil influence of whose presence and example upon society is necessarily injurious to the public welfare and prosperity, and, therefore, calls for such legislative interposition as will operate as a restraint upon the business, and protect the community from the mischiefs, evils and pecuniary burdens flowing from its prosecution. \* \* \* That these provisions unmistakably partake of the nature of police regulations, and are strictly of that character, there can be no doubt, nor can it be denied that their expediency or necessity is solely a legislative, and not a judicial, question. \* \* \* Regarding the law as a precautionary measure, intended to operate as a wholesome restraint upon the traffic, and as a protection to society against its consequent evils, the exacted fee is not unreasonable in amount, and the purpose to which it is devoted is strictly pertinent and appropriate. It could not be questioned but that a reasonable sum imposed in the way of an indemnity to the state against the expense of maintaining a police force to supervise the conduct of those engaged in the business, and to guard against the disorders, and infractions of law occasioned by its prosecution, would be a legitimate exercise of the police power, and not open to the objection that it was a tax for the purpose of revenue, and, therefore, unconstitutional. Reclaiming the inebriate, restoring him to society, prepared again to discharge the duties of citizenship, equally promotes the public welfare, and tends to the accomplishment of like

beneficial results, and it is difficult to see wherein the imposition of a reasonable license fee would be any the less a proper exercise of this power in the one case than in the other. The purpose to which the license fund created by the act is designated is more consonant to the idea of regulating the traffic and preventing its evils than is the case under the general license law, which devotes the fees received to common school purposes, and we are not aware that any objection has ever been urged against that law on that account."<sup>19</sup>

This case is cited with approval by Professor Freund in his work on the Police Power, Sec. 623.

**§ 82. Analogous decisions—Firemen's fund cases.**—Statutes imposing a liability upon fire insurance agents, based upon the amount of the insurance effected by them, for the benefit of a fund to care for injured firemen have been upheld in the states of New York, Illinois and Wisconsin.<sup>20</sup>

**§ 83. These laws an exercise of taxing power—Attributes and limitations of taxing power.**—It is important to inquire as to the right to tax and the extent of this right, for it is this power of the state that is invoked to sustain all insurance and compensation acts. "The power of taxation," says Judge Cooley,<sup>21</sup> "is an incident of sovereignty, and is possessed by the government without being expressly conferred by the people. It is a legislative power; and when the people, by their constitutions, create a department of government upon which they confer the power to make laws, the power of taxa-

<sup>19</sup> *State v. Cassidy*, 22 Minn. 312.

<sup>20</sup> *Fire Department v. Noble*, 3 E. D. Smith (N. Y.) 440; *Fire Department v. Wright*, 3 E. D. Smith (N. Y.) 453; *Exempt Fireman's Fund v. Roome*, 29 Hun (N. Y.) 391, 394; *Firemen's Benevolent Ass'n v. Lounsbury*, 21 Ill. 511, 74 Am. Dec. 115; *Fire Department v. Helfenstein*, 16 Wis. 136.

<sup>21</sup> *Cooley Taxation* (2d ed.), p. 4.

tion is conferred as part of the more general power. \* \* \* Everything to which the legislative power extends may be the subject of taxation, whether it be person or property, or possession, franchise or privilege, or occupation or right. Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes and not only is the power unlimited in its reach as to subjects, but in its very nature it acknowledges no limits, and may be carried to any extent which the government may find expedient. It may, therefore, be employed again and again upon the same subjects, even to the extent of exhaustion and destruction, and may thus become in its exercise a power to destroy. If the power be threatened with abuse, security must be found in the responsibility of the legislature which imposes the tax to the constituency who are to pay it. The judiciary can afford no redress against oppressive taxation, so long as the legislature, in imposing it, shall keep within the limits of legislative authority and violate no express provision of the constitution. The necessity for imposing it addresses itself to the legislative discretion, and it is or may be an urgent necessity which will admit of no property or other conflicting right in the citizen while it remains unsatisfied."

"But," says Judge Cooley, "great as is the power of any sovereignty to levy and collect taxes from its citizens, it is not in a constitutional country without limitations which are of a very distinct and positive nature."<sup>22</sup>

"It is unfit," says Chief Justice Marshall, "for the judicial department to inquire what degree of taxation

<sup>22</sup> Cooley Taxation (2d ed.) 54.

is the legitimate use, and what degree may amount to the abuse of the power."<sup>23</sup>

§ 84. **Subjects of taxation.**—It is to be borne in mind that though the state is practically unlimited as to the extent of the burden it may impose in the way of taxation, yet this power must be exercised within well defined limitations as to the subjects of taxation.

"The power of taxation," says the Supreme Court of the United States, "however vast in its character, and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them the taxation may be exercised in a great variety of ways. It may touch property in every shape in its natural condition, in its manufactured form, and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures and in transportation."<sup>24</sup> To similar effect Chief Justice Marshall said: "The power of legislation, and consequently of taxation, operates on all persons and property belonging to the body politic. This is an original principle, which has its foundation in society itself. It is granted by all for the benefit of all. It resides in the government as part of itself, and need not be reserved where property of any description, or the right to use it in any manner, is granted to indi-

<sup>23</sup> *McCullough v. Maryland*, 4 Wheat. (U. S.) 316, 430, 4 L. ed. 415.

<sup>24</sup> *State Tax on Foreign Held Bonds*, 15 Wall. (U. S.) 315.

viduals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens; and that portion must be determined by the legislature. This vital power may be abused; \* \* \* but the interest, wisdom and justice of the representative body, and its relations with its constituents, furnish the only security where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally.”<sup>25</sup>

**§ 85. Similarity of attributes of general taxation and eminent domain.**—The underlying principle of special taxation, general taxation and eminent domain is the same, namely, that for the tax collected a return shall be given back to the individual whose property is appropriated. “Taxation and eminent domain indeed rest substantially on the same foundation, as each implies the taking of private property for the public use on compensation made; but the compensation is different in the two cases. When taxation takes money for the public use, the taxpayer receives, or is supposed to receive, his just compensation in the protection which government affords to life, liberty and property, in the public conveniences which it provides, and in the increase in the value of possessions which comes from the use to which the government applies the money raised by the tax; and these benefits amply support the individual burden.”<sup>26</sup>

“The theory of the law is, that full compensation is then received in every instance. It is not, it is true, a compensation made in money, but, as in every other case of taxation, the person taxed is to receive a benefit from the expenditure of the moneys collected.”<sup>27</sup>

<sup>25</sup> *Providence Bank v. Billings*, 4 Pet. (U. S.) 514, 561, 7 L. ed. 171.

<sup>26</sup> *Cooley Const. Lim.* (7th ed.), p. 715.

<sup>27</sup> *Cooley Taxation* (2d ed.), p. 625.

**§ 86. Necessity that purpose of tax be a public purpose.**—"It is the first requisite of lawful taxation," says Judge Cooley, "that the purpose for which it is laid shall be a public purpose. The decision to lay a tax for a given purpose involves a legislative conclusion that the purpose is one for which a tax may be laid; in other words, is a public purpose. But the determination of the legislature on this question is not, like its decision on ordinary questions of public policy, conclusive either on the other departments of the government, or on the people. The question, what is and what is not a public purpose, is one of law; and though unquestionably the legislature has large discretion in selecting the object for which taxes shall be laid, its decision is not final. In any case in which the legislature shall have clearly exceeded its authority in this regard and levied a tax for a purpose not public, it is competent for any one who in person or property is affected by the tax, to appeal to the courts for protection."<sup>28</sup>

**§ 87. The public purpose for which taxes may be levied.**—The regulation of private rights for a public purpose under the police power is as much an appropriation of property as the direct taking of property under the taxing power. Thus one of the powers of exercising the police power is to levy a tax for regulative purposes instead of for revenue.

"There are some cases in which levies are made and collected under the general designation of taxes, or under some term employed in revenue laws to indicate a particular class of taxes, where the imposition of the burden may fairly be referred to some other authority than to that branch of the sovereign power of the state under which the public revenues are apportioned and collected. The reason is, that the imposition has not

<sup>28</sup> Cooley Taxation (2d ed.), p. 55.



for its object the raising of revenue, but looks rather to the regulation of relative rights, privileges and duties, as between individuals, to the conservation of order in the political society, to the encouragement of industry, and the discouragement of pernicious employments. Legislation for these purposes it would seem proper to look upon as being made in the exercise of that authority which is inherent in every sovereignty, to make all such rules and regulations as are needful to secure and preserve the public order, and to protect each individual in the enjoyment of his own rights and privileges by requiring the observance of rules of order, fairness and good neighborhood, by all around him. This manifestation of the sovereign authority is usually spoken of as the police power."<sup>29</sup>

Industrial insurance would seem in part to come within the scope of regulative legislation above referred to, since the fund necessary to be raised to protect the employed class must necessarily be created through the exercise of some form of the taxing power, and, moreover, the primary object of such regulative legislation is to readjust relations between certain classes of society to the development of the public welfare. Therefore in determining whether such legislation be constitutional or not, one is confronted with the limitations placed by the Fifth Amendment upon the exercise of the police power by the state in the form of the taxing power.

What then is a public purpose, from the standpoint of such regulative legislation?

"In the first place, taxation having for its only legitimate object the raising of money for public purposes and the proper needs of government, the exaction of moneys from the citizens for other purposes is not a

<sup>29</sup> Cooley Taxation (3d ed.), 1125.

proper exercise of this power, and must therefore be unauthorized. In this place, however, we do not use the word 'public' in any narrow and restricted sense, nor do we mean to be understood that whenever the legislature shall overstep the legitimate bounds of their authority the case will be such that the courts can interfere to arrest their action. There are many cases of unconstitutional action by the representatives of the people which can be reached only through the ballot-box; and there are other cases where the line of distinction between that which is allowable and that which is not is so faint and shadowy that the decision of the legislature must be accepted as final, even though the judicial opinion might be different. But there are still other cases where it is entirely possible for the legislature so clearly to exceed the bounds of due authority that we can not doubt the right of the courts to interfere and check what can only be looked upon as ruthless extortion, provided the nature of the case is such that judicial process can afford relief. An unlimited power to make any and everything lawful which the Legislature might see fit to call taxation, would be, when plainly stated, an unlimited power to plunder the citizen."<sup>30</sup>

**§ 88. Public purpose determined by Legislature.—**It must always be conceded that the proper authority to determine what should and what should not constitute a public burden is the legislative department of the state. This is not only true for the state at large, but it is true also in respect to each municipality or political division of the state; these inferior corporate existences having only such authority in this regard as the legislature shall confer upon them. And in determining this question, the legislature can not be held in any narrow or technical rule. Not only are certain expenditures

<sup>30</sup> Cooley Const. Lim., p. 696.

absolutely essential to the continued existence of the government and the performance of its ordinary functions, but as a matter of policy it may sometimes be proper and wise to assume other burdens which rest entirely on considerations of honor, gratitude or charity. The officers of government must be paid, the laws printed, roads constructed and public buildings erected; but with a view to the general well being of society, it may also be important that the children of the state should be educated, the poor kept from starvation, losses in the public service indemnified, and incentives held out to the faithful and fearless discharge of duty in the future, by the payment of pensions to those who have been faithful public servants in the past. There will, therefore, be necessary expenditures which rest upon considerations of policy only, and in regard to the one as much as to the other, the decision of that department to which alone questions of state policy are addressed must be accepted as conclusive.<sup>31</sup>

Very strong language has been used by the courts in some of the cases on this subject. In a case where was questioned the validity of the state law confirming township action which granted gratuities to persons enlisting in the military service of the United States, the Supreme Court of Connecticut assigned the following reasons in support:

“In the first place, if it be conceded that it is not competent for the legislative power to make a gift of the common property, or of a sum of money to be raised by taxation, where no possible public benefit, direct or indirect, can be derived therefrom, such exercise of the legislative power must be of an extraordinary character to justify the interference of the judiciary; and this is not that case.

<sup>31</sup> Cooley's Const. Lim. (7th ed.), p. 699.

Second. If there be the least possibility that making the gift will be promotive in any degree of the public welfare, it becomes a question of policy, and not of natural justice, and the determination of the legislature is conclusive. And such is this case. Such gifts to unfortunate classes of society, as the indigent blind, the deaf and dumb, or insane, or grants to particular colleges or school, or grants of pensions, swords, or other mementoes for past service, involving the general good indirectly and in slight degree, are frequently made and never questioned."<sup>31a</sup>

**§ 89. Necessity of benefit as condition to right to tax.**—Notwithstanding the vast power which resides in the states to tax, all taxation must proceed upon the theory that a corresponding benefit returns to the individual taxed for the property which belonged to him and which was appropriated. For example, in the use of a general tax collected for the general revenues of the state, it is assumed that the state is suffered to make full and adequate return in the protection which the state gives to the individual, life, liberty and property, and in the increase to the value of his possessions by the uses to which the state applied the money contributed. In the case of a tax which is levied for a special purpose, this theory of return becomes emphasized so that for the purpose of determining the validity of the tax, it becomes necessary to find an immediate specific benefit passing to the individual taxed.<sup>32</sup>

**§ 90. Necessity of return of benefit to one paying to special fund.**—It is essential to the validity of any special tax that there be some return of benefit to the person paying the tax. That is to say, if A's property be given to B under the guise of a tax for the public

<sup>31a</sup> Booth v. Woodbury, 32 Conn. 118, 128.

<sup>32</sup> Cooley Taxation (2d ed.), p. 24.

need, then A must be put in a special class receiving a peculiar benefit in lieu of his appropriated property. Under the insurance or compensation act of the type of the Ohio act the employer is discharged from suit when he has made his contribution to the fund, which complies with the foregoing principle. In other words, to levy this tax without giving A this benefit, would be to appropriate his property without due process of law. Thus to pass a law which would leave the employé the right to exercise the option as to whether he would accept the insurance or continue in the alternative to exercise his present rights of action at law, would, so far as the question of benefits are concerned, leave the employer class exactly where it is at present and would in consequence be the appropriation of his property without due process of law, for in such instance such a law would not only fail to regulate in an economic manner the relation between the employer and employé as desired but would also by reason of continuing the opportunity to sue under the present methods for personal injuries, fail completely to carry out the sole public object of so-called compensative legislation; namely: the economic welfare of the community.

**§ 91. Whether conditions of equality and uniformity are satisfied in insurance and compensation acts.**—A state has the power to tax all callings or it may tax one or more. The Fourteenth amendment to the Federal constitution is satisfied if equal rights are accorded to all in the class. Special legislation is not prohibited by the amendment. In fact the greater part of all legislation is special either in the extent which it operates or the objects sought to be obtained by it.<sup>33</sup>

“A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax, it

<sup>33</sup> *Southwestern Oil Co. v. State*, 217 U. S. 114, 30 Sup. Ct. 496.

is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a state could not tax any property or calling unless, at the same time, it taxed all property or all callings. Its discretion in such matters is very great, and should be exercised solely with reference to the general welfare, as involved in the necessity of taxation for the support of the state. A state may, in its wisdom, classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States."<sup>34</sup>

Industrial insurance as already ordered is a state regulation readjusting the relations of employer and employé for the economic welfare of the community. But this can not be sustained if it amounts to no more than taking the property of the employer and giving it to the employé. It is required that there must be a specific benefit moving to the class taxed, for otherwise no relation can be traced between it and the special purpose for which the funds realized are to be used. In this instance the public good is sought not only in the adequate protection of the wage-earning class but also in the prevention of the vast economic waste now arising from personal injury litigation. Any law then which justifies the appropriation of private property for the public welfare in this respect must be so drawn as in fact to produce these desired results. So far as the employé is concerned, it is clear that for any rights of his so appropriated comes a return in the form of insurance compensation. However, in the scheme of industrial insurance no such direct benefit is traceable to the employer. It remains then that he be indirectly compensated in the

<sup>34</sup> *Connelly v. Union Sewer Pipe Co.*, 184 U. S. 540, 562, 46 L. ed. 679, 690, 22 Sup. Ct. 431, 440.

only way possible if his property is to be taken specifically to be used to insure the employé class, viz: by appropriate protection against the present evils of litigation. Thus one would surrender to the state a right of action for personal injury and receive insurance, and the other would pay a tax in exchange for protection against litigation. As a result each party would have received a peculiar benefit for the particular property interest involuntarily surrendered by it to the common welfare.

The principles above stated are laid down in these decisions of the court which pertain to the distribution of burdens where the interests of the public and of individuals are blended in a common work or service imposed by law.

"There are many instances where parties are compelled to perform certain acts and to bear certain expenses, when the public is interested in the acts which are performed as much as the parties themselves. Thus in opening, widening and improving streets, the owners of adjoining property are often compelled to bear the expenses, or at least a portion of them, notwithstanding the work done is chiefly for the benefit of the public. So, also, in the draining of marsh lands, the public is directly interested in removing the causes of malaria, and yet the expense of such labor is usually thrown upon the owners of the property. Quarantine regulations are adopted for the protection of the public against the spread of disease, yet the requirement that the vessel examined shall pay for the examination is a part of all quarantine systems. *Morgan's L. & T. R. & S. S. Co. v. Louisiana*, 118 U. S. 455, 466, 30 Law ed. 237, 242. So, the expense of a compulsory examination of a railroad engineer, to ascertain whether he is free from color blindness, has been held to be properly chargeable against the railroad company. *Nashville, C. & St. L. R.*

Co. v. Alabama, 128 U. S. 96, 101, 32 L. ed. 352, 354. So, where work is done in a particular county for the benefit of the public, the cost is oftentimes cast upon the county itself instead of upon the whole state. Thus, in *County of Mobile v. Kimball*, 102 U. S. 691, 28 L. ed. 238, it was held that a provision for the issuing of bonds by a county in Alabama could not be declared invalid, although it imposed upon one county the expense of an improvement in which the whole state was interested. In such instances where the interests of the public and of individuals are blended in any work or service imposed by law, whether the cost shall be thrown entirely upon the individuals or upon the state, or be apportioned between them, is matter of legislative direction.<sup>35</sup>

§ 92. **Whether contract clauses of constitutions are violated—Uniform operation of laws.**—That the contracts contemplated by these acts are based upon a valid consideration is shown by reference to the "Voluntary Relief Department" cases involving railroad men. In this class of cases an employé of a railroad company applies for admission to an association composed of the company and a portion of its employés, and when admitted contracts that the company may deduct from his wages a certain insignificant sum each month for the purpose of forming, with other like contributions by other employé members, together with sums contributed by the company, a relief fund for the benefit of the employés in case of sickness, accident or death. The contract provides that in case of accident, the acceptance by the employé of relief from the fund relieves the company from liability for damages. These contracts when voluntarily and understandingly entered into have been

<sup>35</sup> *Charlotte, etc., R. Co. v. Gibbs*, 142 U. S. 386, 12 Sup. Ct. 255, 35 L. ed. 1051.



held to be based upon a valid consideration, to possess mutuality and to be not contrary to public policy.<sup>36</sup>

In respect to the sufficiency and legality of the notice that the employer who has paid the premiums required by the statute has posted in and about his place of business a copy of the state treasurer's receipt, to the effect that he has paid said premiums is amply supported by the road law cases. In these cases it has been held that such a law declares a rule of evidence whereby a waiver, on the part of the landowner, of his right to compensation, may be established, and does not conflict with the constitution relating to the inviolability of private property. The rule contained in this proviso can not be regarded either as a statute of limitations, whereby a right secured by the constitution is barred immediately upon the accruing thereof, or as a statute declaring the forfeiture of private property. Relief in equity, by restraining the appropriation of private property for a public road under said statutes, will not be granted on the ground that compensation therefor has not been paid to the owner in money, in a case where the owner, having actual notice of the proceedings in which the property is sought to be taken, and of the time and place of the view, neglected or failed to present his application for compensation, in writing, to the viewers, and where it is not shown that the default was occasioned by inevitable casualty, or by other circumstances against which reasonable precaution could not have provided.<sup>37</sup>

On the question of the extent the legislature may go in the exercise of its police power in regulating the relation of employer and employé, without violating the provisions of the Fourteenth Amendment of the Constitution of the United States by abridging the privileges or

<sup>36</sup> Pittsburg, etc., R. Co. v. Cox, 55 Ohio St. 497, 45 N. E. 641. See generally, § 79.

<sup>37</sup> Reckner v. Warner, 22 Ohio St. 275.

immunities of the citizens, or by depriving them of their property, or by denying to them the equal protection of the laws, the Supreme Court of the United States in construing an eight-hour law in the light of the Fourteenth Amendment has said:

"In passing upon the validity of state legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some States methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthy employments, have been found to be in need of additional protection," but this power of change is limited by the "fundamental principles laid down in the Constitution, to which each member of the Union is bound to accede as a condition of its admission as a State."<sup>38</sup>

**§ 93. Insurance and compensation laws a proper exercise of police powers.**—The Supreme Court of the United States has most clearly defined the conditions under which the conduct of business or employments warrants the exercise of legislative power of any state to pass proper police measures to regulate the same for the purpose of protecting society as a whole, in speaking through Chief Justice Waite, in the epoch-making case of *Munn v. Illinois*.<sup>39</sup>

This case involved the constitutionality of a law

<sup>38</sup> *Holden v. Hardey*, 169 U. S. 366, 42 L. ed. 780.

<sup>39</sup> 94 U. S. 113, 24 L. ed. 77.

passed by the legislature of Illinois to regulate the rates which grain elevators might charge. This act fixed a maximum rate which grain elevators might charge the public for storing grain. Said the Chief Justice: 'The state is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.

"From this source come the police powers, which, as said by Chief Justice Taney in the License Cases, 5 How. 583, 12 L. ed. 291, 'are nothing more or less than the powers of government inherent in every sovereignty, \* \* \* that is to say, \* \* \* the power to govern men and things.' Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day statutes are to be found in many of the states upon some or all of these subjects; and we think that it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property. With the 5th Amendment in force, Congress, in 1820, conferred power upon the city of Washington 'to regulate \* \* \* the rates of wharfage at private wharves, \* \* \* the sweeping of chimneys, and to fix the rate of fees therefor, \* \* \* and the weight and quality of bread,' 3 Stat. at L. 587, Chap. 104, Sec. 7; and in 1848, 'to make all necessary regulations respecting hackney carriages,

and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers.' 9 Stat. at L. 224, Chap. 42, Sec. 2.

"From this it is apparent that, down to the time of the adoption of the 14th Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular; it simply prevents the states from doing that which will operate as such a deprivation. \* \* \*

Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control. \* \* \*

"Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin, that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long-known and well-established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to de-

clare their obligations, if they use it in this particular manner.”

It follows that the existing conditions relative to the effects of personal injuries which workmen receive in the due course of their employment, upon their dependents and society as a whole, come within the domain of applicability of the police power of the state and that the remedy of obligatory industrial insurance, is not in conflict with the constitutional limitations of the several state or Federal Constitutions.

**§ 94. Whether laws open to objection of lack of uniformity of operation and equality of protection—Classification.**—An objection commonly urged against compensation laws limited to employers having more than a stated number of employes, is that they are, by that very fact, without uniform operation within the meaning of constitutions making this a condition to a valid statute. The objection has been held without merit in the case of a statute which required mine inspection in mines where more than five men were employed at any one time.<sup>40</sup>

Such a classification is justified by the rule of reason. “It would be almost a physical impossibility to cover all employments at the start, as for example, domestic service, casual employments and farmers. European countries in the beginning placed similar limitations in the application of their acts and later removed them.

“This is a species of classification which the legislature is at liberty to adopt, provided it is not wholly arbitrary or unreasonable, as it was in *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, in which an act defining what should constitute public stock yards and regulating all charges connected therewith was held to be unconstitutional, because it applied only to one particular company, and not to other companies or cor-

<sup>40</sup> *St. Louis, etc., Coal Co. v. Illinois*, 185 U. S. 203, 46 L. ed. 872.

porations engaged in a like business in Kansas, and thereby denied to that Company the equal protection of the laws. In the case under consideration there is no attempt arbitrarily to select one mine for inspection, but only to assume that mines, which are worked upon so small a scale as to require only five operators, would not be likely to need the careful inspection provided for the larger mines, where the workings were carried on upon a larger scale or at a greater depth from the surface, and where a much larger force would be necessary for their successful operation. It is quite evident that a mine which is operated by only five men could scarcely have passed the experimental stage, or that cautions necessary in the operation of coal mines of ordinary magnitude would be required in such cases. There was clearly reasonable foundation for discrimination here."<sup>41</sup>

The question is squarely met in a recent case construing a workmen's compensation act. In this case the court said:

"But it is said that there is no proper classification here and hence that the law is fatally discriminating in its character. The two defenses are preserved intact to employers who elect to come under the law and taken away from those who do not so elect.

"The rules governing classification are familiar and are in brief as follows: It must be based on substantial distinctions which make real differences, it must be germane to the purposes of the law; it must not be limited to existing conditions only; and must apply equally to each member of the class. It seems to us that this classification fully meets these requirements. Certainly there will be very real differences between the situation

<sup>41</sup> *St. Louis, etc., Coal Co. v. Illinois*, 185 U. S. 203, 46 L. ed. 872. See also *McLean v. Arkansas*, 211 U. S. 539, 29 Sup. Ct. 206; *Williams v. Arkansas*, 217 U. S. 79; *Angel v. O'Malley*, 219 U. S. 129; *Borgnis v. Falk Co.*, 149 Wis. 327, 133 N. W. 209.

of the employer who elects to come under the law and the employer who does not. \* \* \*

"It seems to us that this question must be answered in the affirmative, and if it be so answered there can be no doubt as to the legitimacy of the classification, for the reason that it is quite apparent that the other conditions of valid classification are fully satisfied. There can be no doubt that the classification is germane to the purpose of the law, and it is not limited in its application to existing conditions only, and applies equally to each member of the class.

"The minor classification by which the fellow-servant defense is preserved to all employers employing less than four employés in a common employment is also attacked as having no proper legal basis, but it seems to us that the grounds of classification here are more persuasive even than in the case just discussed. The man who is employed with one or two other men in a given employment in all reasonable probability knows their characteristics well and will probably be with them a great part of the time. He will have ample opportunity to form a just judgment as to the risk of injury from their negligence which he will run if he works with them, and will be enabled to shape his own conduct accordingly; but the man who is one of a large number of men, many of whom he never sees, and some of these latter having duties to perform in distant places upon the due performance of which his own safety depends, has no opportunity to acquire any accurate knowledge of the characteristics of many of his fellow-workmen and can not intelligently decide what risk he runs at the hands of such distant and unknown employés. The difference in situation is not merely fanciful—it is real. In one case the employé knows or has the means of knowing what to expect from his co-laborers, in the other case he has neither the knowledge nor the means

of knowledge. Of course there will be cases on the border line where the difference in situation will be very slight or perhaps entirely non-existent. There will probably be no practical difference between the situation of the man who is one of four or five employés in a given employment and the situation of the man who is one of three, but this does not militate against the legitimacy of the classification: this is a necessary defect in all cases of classification based upon numbers. The question is not whether there may be some on one side of the line whose situation is practically the same as that of some on the other side, but whether there is a 'distinction between the classes as classes, whether there are characteristics which, in a greater degree, persist through the one class than in the other which justify legal discrimination between them.' "<sup>42</sup>

**§ 95. Legislature in its enactments limited only by state and Federal constitutions.**—The legislature of a State can do any legislative act that is not prohibited by the State or Federal Constitution, and without and beyond the limitations and restrictions contained in those instruments, the law-making power of the state is as absolute, omnipotent and uncontrollable as that of the English parliament. Within these limitations the legislature may pass any law which could be enacted in the most despotic government or which the people could enact in their primary capacity.<sup>43</sup>

This principle would certainly seem sufficient to warrant a legislature—with the power to act on the

<sup>42</sup> *Borgnis v. Falk Co.*, 149 Wis. 327, 133 N. W. 209. See also *State v. Evans*, 130 Wis. 381.

<sup>43</sup> *People v. Hill*, 163 Ill. 186, 46 N. E. 796; *Fireman's Benev. Soc. v. Lounsbury*, 21 Ill. 511; *Munn v. People*, 69 Ill. 80; *Mason v. Wait*, 4 Scam. (Ill.) 127; *People v. Hoffman*, 116 Ill. 587; *Chicago & St. Louis R. R. Co. v. Warrington*, 92 Ill. 157; *Richards v. Raymond*, 92 Ill. 612; *People v. Wall*, 88 Ill. 75; *Hawthorne v. People*, 109 Ill. 302.



main subject—to fix the premiums to be paid, upon the basis of the hazard in the different employments and arbitrarily to make the compensation to the injured workman a certain percentage of his wages.

**§ 96. Nature of administration of compensation acts.**—An insurance or compensation act should not confound the executive and judicial functions of the state. It is of the highest importance on the ground of expediency that these provisions shall take, as far as possible, the form of administrative measures rather than those of a judicial nature. In the administration of an industrial insurance act, it is necessary in the interest of economy to put into operation summary methods of procedure in so far as they are in harmony with justice. At the same time, it is necessary to use as little as possible those judicial methods which experience has shown result in such great economic waste in the adjudication of personal injury suits. In the second place: If the final determination of a controversy arising under an industrial insurance act must be by means of a trial by jury, then the much hoped for saving in economy would be lost. The 7th Amendment of the Constitution of the United States reads as follows: "In suits at common law where the value in controversy shall exceed \$20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

It follows, therefore, from the 7th Amendment, that in case a controversy arising out of an industrial insurance act can be classified as an executive function of the state, then the 7th Amendment has no application, for the reason that it is limited in its application by its express provisions to judicial proceedings. The inquiry at this point is whether the administration of the act is an

executive or judicial function and if a judicial function does it fall within that class of actions which receive a trial by jury.

§ 97. Nature of administration of compensation acts whether executive or judicial—Due process.—A consideration of the question whether these acts call into exercise executive or judicial functions involves an investigation of the limitations created by the 5th Amendment to the Federal Constitution, with respect to "due process of law." This provision is deemed to apply not only to the power of the legislative, but also to the judicial branches of the state government. This amendment provides that:

"No person shall be deprived of life, liberty, or property, without due process of law."

The phrase "due process of law" has application in our problem, not only to the rights created by the act, but also rather to the remedy provided by the act to make the putting the same into effective operation.

The executive arm of every state government disposes of many problems which, considered by themselves, are purely judicial in character. This principle, as the authorities show, is illustrated in the following examples, viz.: (1) In the levying of special assessments; (2) in the exercise of the power of eminent domain; (3) in the collection of various taxes; (4) in the adjudication of those controversies (of purely judicial nature) which deal with questions of account between tax collectors and the state, in which the state may finally determine all issues through its administrative agencies. Says the Supreme Court of the United States:

"Though 'due process of law' generally implies and includes actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled

course of judicial proceedings (2 Inst. 47, 50; *Hoke v. Henderson*, 15 N. C. (4 Dev. L.) 15, 25 Am. Dec. 677; *Taylor v. Porter*, 4 Hill 146, 40 Am. Dec. 274; *Vanzant v. Waddel*, 2 Yerg. 260; *Bank of State v. Cooper*, 2 Yerg. 599, 24 Am. Dec. 517; *Jones v. Perry*, 10 Yerg. 59, 30 Am. Dec. 430; *Greene v. Briggs*, 1 Curt. C. C. 311, Fed. Cas. No. 5,764), yet this is not universally true. There may be, and we have seen that there are cases under the law of England after Magna Charta and as it was brought to this country and acted on here, in which process, in its nature final, issues against the body, lands, and goods of certain public debtors without any such trial; and this brings us to the question whether those provisions of the Constitution which relate to the judicial power are incompatible with these proceedings.

“That the auditing of the accounts of a receiver of public moneys may be, in an enlarged sense, a judicial act, must be admitted, so are all those administrative duties the performance of which involves an inquiry into the existence of facts and the application to them of rules of law. In this sense the act of the President in calling out the militia under the act of 1795 (12 Wheat. 19, 6 L. ed. 537,) or a commissioner who makes a certificate for the extradition of a criminal, under a treaty, is judicial. But it is not sufficient, to bring such matter under the judicial power, that they involve the exercise of judgment upon law and fact. \* \* \* The power to collect and disburse revenue and to make all laws that shall be necessary and proper for carrying that power into effect, includes all known and appropriate means of effectually collecting and disbursing that revenue, unless some such means should be forbidden in some part of the Constitution. The power has not been exhausted by the receipt of the money by the collector. Its purpose is to raise money and use it in payment of the debts

of the government; and whoever may have possession of the public money, until it is actually disbursed, the power to use those known and appropriate means to secure its due application continues."<sup>44</sup>

The right of trial by jury does not apply to condemnation proceedings. The jury trial can only be claimed as a constitutional right where the subject is judicial in its character. The exercise of the right of eminent domain stands on the same ground with the power of taxation. Both are emanations of the law-making power. They are attributes of political sovereignty, for the exercise of which the legislature is under no necessity to address itself to the courts. In imposing a tax, or in appropriating the property of a citizen, or a class of citizens, for a public purpose, with a proper provision for compensation, the legislative act is itself due process of law; though it would not be if it should undertake to appropriate the property of one citizen for the use of another, or to confiscate the property of one person or a class of persons, or a particular description of property, upon some view of public policy, where it could not be said to be taken for a public use.<sup>45</sup>

The principle is the same in the matter of the levy and collection of ordinary taxes in a summary manner.<sup>46</sup>

"The mode of assessing taxes in the states, by the Federal government, and by all governments, is necessarily summary, that it may be speedy and effectual. By summary is not meant arbitrary or unequal or illegal.

<sup>44</sup> *Murray v. Hoboken Land, etc., Co.*, 18 How. (U. S.) 272, 15 L. ed. 372.

<sup>45</sup> *Lewis Eminent Domain* (2d ed.), § 311. In *re New York Central R. Co.*, 66 N. Y. 407.

<sup>46</sup> *Kelly v. Pittsburg*, 104 U. S. 80, 26 L. ed. 659; *Palmer v. McMahon*, 133 U. S. 699, 33 L. ed. 776, 10 Sup. Ct. 324; *Spencer v. Merchant*, 125 U. S. 345, 31 L. ed. 763, 8 Sup. Ct. 921; *Watson v. Nevin*, 128 U. S. 578, 32 L. ed. 544, 9 Sup. Ct. 192; *Hagar v. Reclamation Dist.*, 111 U. S. 701, 28 L. ed. 569, 4 Sup. Ct. 663.

It must, under our Constitution, be lawfully done. But that does not mean, nor does the phrase 'due process of law' mean, by a judicial proceeding. The nation from whom we inherit the phrase 'due process of law' has never relied upon the courts of justice for the collection of her taxes, though she passed through a successful revolution in resistance to unlawful taxation."<sup>47</sup>

The principle is satisfied if the law provides for a board of revision authorized to hear complaints respecting the justice of the assessment, and prescribes the time during which and the place where such complaints may be made.<sup>48</sup>

**§ 98. Deprivation of right to trial by jury.**—The question whether these statutes operate as a denial of the right to trial by jury within the constitutional sense is squarely met by the Supreme Court of Montana in passing upon the compensation law of that state. After showing that the constitution does not prevent a change in the system of actions for negligence, the court says:

"The right of trial by jury which is secured and protected by the constitution, refers to the trial of cases, actions, or suits at law (see *Koppikus v. Capitol Commissioners*, 16 Cal. 249), and has no reference to claims against an indemnity fund, such as are provided for by this act, or demands by the State auditor for occupation taxes. There is not anything in the constitution guaranteeing a right of trial by jury in case of demand for a license or occupation tax. The adjustment of claims under the act is an administrative function and not a judicial proceeding, and it is only in certain cases falling under the latter designation that trial by jury is guaranteed by the constitution. 'Due process of law' does not

<sup>47</sup> *McMillen v. Anderson*, 95 U. S. 37, 24 L. ed. 335.

<sup>48</sup> *Hagar v. Reclamation District*, 111 U. S. 701, 28 L. ed. 569, 4 Sup. Ct. 663.

necessarily require a jury trial." (*Montana Co. v. St. Louis Min. Co.*, 152 U. S. 160.)<sup>49</sup>

The principles are well summarized by Mr. Robert J. Carey. In his view the decisions do not require trial by jury for the purpose of adjudicating a claim made by an employé against a government agency, for the payment out of a tax fund of a stipulated sum alleged to be due such employé as insurance. "Such right so vested in the employé is not a new private right against his employer. Thus it bears no resemblance to new substantive private rights akin to common-law rights, though created by statute. It is rather a right to share in a tax fund, and thus is necessarily a claim against the government, though the details of the law might be such that the claim is to be made against a government agency, as, for instance, a bureau, commission, or association. The fund against which such claim is made is collected admittedly in a summary proceeding; the right to an interest in such fund arises not for the purpose of recoupment in damages on account of a private wrong done the employé, but solely because the employé, being a victim of a prevalent evil, is to be protected by the state as a member of a class of society. The right, indeed, is in one respect akin to the right of a landowner in an eminent domain suit to compensation due him in lieu of his property appropriated. In the present instance the employé's chose in action against his employer for a person wrong suffered is taken from him, and in lieu of which he is paid a benefit for the appropriation of such right. Under such circumstances, even though a controversy arising over the payment of a fund take judicial form, we think it within the power of the government to determine the character of the remedy."<sup>50</sup>

<sup>49</sup> *Northwestern Imp. Co. v. Cunningham*, — *Mont.* —, 119 *Pac.* 554, citing *Montana Co. v. St. Louis Min. Co.*, 152 U. S. 160.

<sup>50</sup> Brief on Power of Congress in respect of Industrial Insurance

§ 99. **Whether act may be optional.**—It is well settled by the decisions of the Supreme Court of the United States that if an act mandatory in form can be constitutional, it will likewise be constitutional if it is voluntary in form.<sup>51</sup>

This conclusion was reached in the bank deposit guarantee fund cases which came to the court from the states of Oklahoma, Nebraska and Kansas. The law of the latter state was voluntary in form in certain of its vital features. The laws of the former were obligatory in form. Speaking of these differences Mr. Justice Holmes said:

“The most important of these is that contribution to the fund is not absolutely required. On this ground it is said, and was thought by the Circuit Judge, that the law could not be justified under the police power. We cannot agree to such a limitation. If, as we have decided, the law might compel the contribution on the grounds that we have stated, it may try to bring about the same result by the creation of motives less compulsory than command and of disadvantages in holding aloof less peremptory than an immediate stop. We shall not go through the details of minute criticism urged by the appellants, in most if not all of which they are in no way concerned.

“Perhaps the most striking of these subordinate matters is the preference of ordinary depositors over other creditors,—a preference that seems to be overstated by the appellants.

“This, obviously, is in aid of what we have assumed and the *Law of Workmen's Compensation*, p. 137, citing *McElrath v. United States*, 102 U. S. 426, 26 L. ed. 189; *Guthrie Nat. Bank v. Guthrie*, 173 U. S. 534, 43 L. ed. 798, 19 Sup. Ct. 513.

<sup>51</sup> *Noble State Bank v. Haskell*, 219 U. S. 104, 31 S. Ct. 186, 299; *Shallenberger v. First State Bank*, 219 U. S. 114, 31 S. Ct. 189; *Assaria State Bank v. Dolley*, 219 U. S. 121, 31 S. Ct. 189.

to be the one of the chief objects and justifications of such laws, securing the currency of checks. The ordinary deposits are those that are drawn against in that way."<sup>52</sup>

<sup>52</sup> *Assaria State Bank v. Dolley*, 219 U. S. 121, 31 S. Ct. 189.



## CHAPTER IX.

### SUMMARY OF FOREIGN COMPENSATION LAWS.

Sec.	Sec.
100. Outline of foreign workmen's compensation laws.	113. Luxemburg schedule.
101. Austrian schedule.	114. Netherlands schedule.
102. Belgian schedule.	115. New Zealand schedule.
103. British Columbia schedule.	116. Norwegian schedule of compensation and scope of act.
104. Cape of Good Hope schedule.	117. Queensland schedule of compensation and scope of act.
105. Denmark schedule.	118. Russian schedule.
106. Finland schedule.	119. South Australian schedule.
107. French schedule.	120. Swedish schedule.
108. German schedule of compensation and scope of act.	121. Spanish schedule.
109. Great Britain schedule.	122. West Australia schedule of compensation and scope of act.
110. Greek schedule of compensation and scope of act.	
111. Hungarian schedule.	
112. Italian schedule.	

§ 100. Outline of foreign workmen's compensation laws.<sup>1</sup>—By the term “workmen's compensation laws” are meant enactments which embody the principle that the workman is entitled to compensation for injuries received in the course of his employment. Such laws have been enacted in twenty-two foreign States.

Usually the injuries must cause disablement for a specified number of days or weeks before compensation becomes due. The employer may usually be relieved from the payment of compensation if he can prove that the injury was caused intentionally or by wilful misconduct, or in some countries by the gross negligence of the injured person or during the performance of an illegal act.

The industries usually covered by the acts are manufacturing, mining and quarrying, transportation, build-

<sup>1</sup> The sources of this chapter are found in the 24th annual report of the Department of Commerce and Labor.—[AUTHOR.]

ing and engineering work, and other employments involving more or less hazard. In Belgium, France, and Great Britain the laws apply to practically all employments. In Austria, Belgium, Denmark, Finland, Germany, Italy, Luxemburg, Netherlands, Norway, Russia, Spain, and Sweden, only workmen engaged in actual manual work, and in some cases those exposed to the same risks, such as overseers and technical experts, come within the operations of the law. On the other hand, in France, Great Britain, the British colonies, and Hungary, the laws apply to salaried employés and workmen equally. Overseers and technical experts earning more than a prescribed amount are excluded in Belgium, Denmark, Germany, Great Britain, Italy, Luxemburg, and Russia. Employés of the state, provincial, and local administrations usually come within the provisions of the acts.

The entire burden rests upon the employer in all but five countries, Austria, Germany, Great Britain (since the enactment of the David Lloyd George Insurance Laws against sickness, invalidity and old age and out of work), Hungary, and Luxemburg, where the employés bear part of the expense. The laws in every case fix the compensation to be paid. Except in Sweden the compensation is based upon the wages of the injured person. It consists of medical and surgical treatment and periodical allowances for temporary disability, and annual pensions or lump-sum payments for permanent disability or death.

In most countries employers may contract with state or private insurance institutions for meeting the payments. In a number of countries such transfer is obligatory. Provision is usually made for the protection of beneficiaries in case of insolvency of employers.

The acts of nearly all of the countries are framed with the view of obviating the necessity for instituting legal proceedings. If disputes arise, the acts specify the

necessary procedure for settlement by special arbitration tribunals or by ordinary law courts.

The following summary gives the most important features of the workmen's compensation acts of all countries:

**§ 101. Austrian schedule.**—Date of enactment.—December 28, 1887, in effect November 1, 1889, Amendatory acts, March 30, 1888, April 4 and July 28, 1889, January 17, 1890, December 30, 1891, September 17, 1892, July 20, 1894, and July 12, 1902.

Injuries compensated.—All injuries causing death or disability for more than three days received in the course of employment, unless caused intentionally.

Industries covered.—Mining, quarrying, stonecutting, manufacturing, building trades, railways, transportation on inland waters, storage, theaters, chimney sweeping, street cleaning, building cleaning, sewer cleaning, dredging, well digging, structural iron working, etc.; agricultural and forestry establishments using machinery.

Persons compensated.—All workmen and technical officials regularly employed, but in agriculture and forestry only employes exposed to machinery.

Government employes.—Act applies to government employes unless an equal or more favorable compensation is provided by other laws.

Burden of payment.—Medical and surgical treatment for twenty weeks and compensation for four weeks of disability paid by sick funds, to which employers contribute one-third and employes two-thirds. Compensation for disability after fourth week, and for death, paid by territorial insurance associations, to which employes contribute 10 per cent and employers 90 per cent.

Compensation for death:

- (a) Funeral expenses not to exceed 25 florins (\$10.15).

- (b) Pensions to members of family, not to exceed 50 per cent of earnings of deceased, to—

Widow, 20 per cent until death or remarriage; in the latter case a lump sum equal to three annual payments; to dependent widower, 20 per cent during disability.

Each legitimate child, 15 years of age or under, 15 per cent when one parent survives and 20 per cent when neither survives; to each illegitimate child, 15 years of age or under, 10 per cent; pensions of widow (or widower) and children reduced proportionately if they aggregate over 50 per cent.

- (c) When pensions to above heirs do not reach 50 per cent, dependent heirs in ascending line receive pensions, not to exceed 20 per cent of earnings of deceased, parents taking precedence over grandparents.
- (d) In computing pensions, the excess of the annual earnings over 1,200 florins (\$487.20) is not considered.

#### Compensation for disability:

- (a) Medical and surgical attendance for twenty weeks, paid by sick benefit fund.
- (b) For total temporary or permanent disability, 60 per cent of average daily wages of insured workmen in the locality, paid by sick benefit funds, from first to twenty-eighth day; and 60 per cent of average annual earnings of injured person, after twenty-eighth day, paid by territorial accident insurance institutions.
- (c) For partial temporary or permanent disability, benefits consist of a portion of above

allowance, but may not exceed 50 per cent of average annual earnings.

- (d) In computing payments the excess of annual earnings over 1,200 florins (\$487.20) is not considered.

Revision of compensation.—Reconsideration of the case may be undertaken by the insurance association of its own will, or upon petition.

Insurance.—Payments are met by mutual insurance associations of employers, in which all employés are required to be insured. The country is divided into districts, with a separate association for each district.

Security of payments.—Operations of the insurance associations are conducted under the supervision of the minister of interior, who may increase the assessments.

Settlement of disputes.—Disputes are settled by arbitration courts composed of a judicial officer appointed by the minister of justice, two experts appointed by the minister of the interior, and one representative each of the employers and employés.

§ 102. **Belgian schedule.**—Date of enactment.—December 24, 1903, in effect July 1, 1905.

Injuries compensated.—All injuries by accident to employés in the course of and by reason of the execution of the labor contract, causing death or disability for over one week, unless intentionally brought on by the person injured.

Industries covered.—Practically all establishments in mining, quarrying, forestry work, manufacturing, building and engineering work, transportation, and telephone and telegraph services; establishments using mechanical motive power; industrial establishments employing five or more persons; agricultural and commercial establishments employing three or more persons; industries designated by royal decree as dangerous. Other industries at option of employer.

Persons compensated.—Workmen and apprentices, and salaried employés exposed to the same risks as workmen whose annual salaries do not exceed 2,400 francs (\$463.20).

Government employés.—Act covers employés of any public establishment engaged in industries enumerated above.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

(a) Funeral benefit of 75 francs (\$14.48).

(b) A sum representing value of an annuity of 30 per cent of annual earnings of deceased, calculated upon basis of his age at death, to be distributed to—

Dependent widow or widower, whole amount if no other heirs, four-fifths if one child under 16 years of age or one or more dependent heirs, three-fifths if two or more children.

Children under 16 years of age, the residue.  
Dependent heirs in ascending line and descending line under 16 years of age, in absence of widow or widower or children under 16 years of age.

Dependent brothers and sisters under 16 years of age in absence of heirs above enumerated.

(c) Allowances in case of annual wages of 2,400 francs (\$463.20) or more, or of 365 francs (\$70.45) or less, are based upon these amounts, respectively.

(d) Payments to widow and heirs in ascending line are converted into life pensions, those to other heirs into pensions expiring at age of 16 years. Heirs may require one-third

of capital value of life pensions to be paid in cash and pension reduced accordingly.

Compensation for disability:

- (a) Expense of medical and surgical treatment for not over six months.
- (b) If totally disabled, an allowance of 50 per cent of daily wages, beginning with day after accident.
- (c) If partially disabled, an allowance of 50 per cent of loss of earning power, beginning with day after accident.
- (d) If, after three years, disability is permanent, temporary allowance is replaced by life annuity. Victim may require one-third of capital value of pension to be paid in cash and pension reduced accordingly.
- (e) Allowances in case of annual wages of 2,400 francs (\$463.20) or more, or of 365 francs (\$70.45) or less, are based upon these amounts, respectively.

Revision of compensation.—Revision of compensation because of aggravation or diminution of disability, or death of victim, may be made within three years.

Insurance.—Employers may transfer burden of payment of compensation to establishment funds or approved insurance companies or to general savings and retirement fund. They may also transfer burden of payment of temporary allowances to mutual aid societies.

Security of payments.—Employers who have not relieved themselves of liability by insurance must make deposits of cash or securities or give real estate mortgages to secure pension payments. To secure temporary disability payments of uninsured employers a State guaranty fund is maintained by a tax levied upon such employers.

Settlement of disputes.—The local justice of the

peace has sole jurisdiction as a court of first resort over disputes arising under the act, and his judgment is final in all cases involving 300 francs (\$57.90) or less.

**§ 103. British Columbia schedule.**—Date of enactment.—June 21, 1902, in effect May 1, 1903.

**Injuries compensated.**—Injuries by accident arising out of and in the course of the employment which cause death or disable a workman for at least two weeks from earning full wages at the work at which he was employed, unless the injury is “attributable solely to the serious and wilful misconduct or serious neglect” of the injured workman.

**Industries covered.**—Railways, factories, mines, quarries, engineering work, and buildings which exceed 40 feet in height and are being constructed or repaired by means of a scaffolding or being demolished, or on which machinery driven by mechanical power is used for construction, repair, or demolition.

**Persons compensated.**—All persons engaged in manual labor or otherwise.

**Government employés.**—Act applies to civilian employés in the service of the Crown, to whom it would apply if the employer were a private person.

**Burden of payment.**—Entire cost of compensation rests upon employer.

**Compensation for death:**

- (a) A sum equal to three years' earnings, but not less than \$1,000 nor more than \$1,500, to those wholly dependent on earnings of deceased.
- (b) A sum less than above amount if workman leaves persons partially dependent on his earnings, the amount to be agreed upon by the parties or to be fixed by arbitration.
- (c) Reasonable expenses of medical attendance and burial, not exceeding \$100, if deceased leaves no dependents.



Compensation for disability:

- (a) A weekly payment during disability after second week, not exceeding 50 per cent of employé's average weekly earnings during the previous twelve months, such weekly payments not to exceed \$10, and total liability not to exceed \$1,500.
- (b) A weekly payment during partial disability after second week to be fixed with regard to the difference between employé's average weekly earnings before the accident and average weekly amount which he is earning or able to earn after the injury.
- (c) A lump sum may be substituted for the weekly payments, after six months, on the application of the employer, the amount to be settled, in default of agreement, by arbitration under the act.

Revision of compensation.—Weekly payments may be revised at request of either party.

Insurance.—Employers may contract with their employés for the substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act if the attorney-general certifies that the scheme is on the whole not less favorable to the general body of employés and their dependents than the provisions of the act. In such case the employer is liable only in accordance with this scheme.

Security of payments.—When an employer becomes liable under the act to pay compensation and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, such workman has a first claim upon the amount so due, and a judge of the supreme court may direct the insurers to pay such sum into any chartered bank of Canada to be invested or applied to payment of compensation.

Settlement of disputes.—Disputes arising under the act are settled by arbitration of existing committees representative of employers and employés, or if either party objects, by a single arbitrator agreed upon by the parties, or, in the absence of agreement, by an arbitrator appointed by a judge of the supreme court. An arbitrator appointed by a judge of the supreme court has all the power of a judge of the supreme court. Questions of law may be submitted by the arbitrator for the decision of a judge of the supreme court.

§ 104. **Cape of Good Hope schedule.**—Date of enactment.—June 6, 1905, in effect September 1, 1905.

Injuries compensated.—All injuries to employés arising out of and in the course of the employment causing death or necessitating absence from work for more than three days and not being caused by or through the gross carelessness of the injured employé.

Industries covered.—Any trade, business, or public undertaking, on land or upon or within the territorial waters of the colony, except domestic, messenger, or errand service or employment in agriculture.

Persons compensated.—Employés, whether engaged in manual work or otherwise.

Government employés.—Act applies to civilian persons employed by or under the Crown to whom it would apply if employer were a private person.

Burden of payment.—Employer and every principal are jointly and severally liable for the compensations required under the act.

Compensation for death.—When death results from an injury for which a lump sum has not already been paid on account of permanent disability—

- (a) A lump sum not exceeding three years' wages of deceased, nor more than £400 (\$1,946.60), to those wholly dependent upon the workman's earnings.

- (b) A lump sum not exceeding £200 (\$973.30), to those partially dependent upon the workman's earnings; in the absence of persons totally dependent, the sum not to exceed the value of the support which they were receiving from the deceased, calculated for two years.
- (c) Temporary payments previously made not to be deducted from above sums unless they have continued longer than three months.
- (d) Reasonable expenses of medical attendance and burial not exceeding £40 (\$194.66) in case deceased leaves no dependents.

Compensation for disability:

- (a) A sum not exceeding three years' wages, less any payments received under a provisional order of court, but not exceeding £600 (\$2,919.90) in case of permanent total disability, and a smaller sum in proportion to loss of earning power and not exceeding £300 (\$1,459.95) in case of permanent partial disability.
- (b) A payment made, by order of the local magistrate, at the same intervals as the customary wage payments, not exceeding 50 per cent of wages received at time of the injury, nor £2 (\$9.73) per week if the injury causes temporary disability lasting more than three days.

Revision of compensation.—The provisional order may be set aside or altered by the magistrate, upon request of either party, if justified by a further examination of the injured person or by production of additional evidence.

Insurance.—Employers may insure in a company or association against personal injury to the workmen em-

ployed by them or in their behalf. If the employer contributes toward a benefit society of which the injured or deceased person is a member, allowance is made for such contribution by the court in its order or judgment fixing amount of compensation to be paid.

Security of payments.—When an employer or principal is adjudged or admits liability under the act and is entitled to any sum from any insurers on account of such liability, then, in the event the employer becomes insolvent, the worker or his dependents have a first claim upon such sum.

Settlement of disputes.—Compensation in cases of disability is fixed provisionally for not more than six months by the local magistrate after receiving a physician's certificate of disability and holding an inquiry. No appeal can be taken from this preliminary order except against a finding on the question of gross carelessness and then only upon leave granted by the superior court. In case the injury results in death or permanent disability, the claimants have a right of action in the local magistrate's court for the amounts due under the law. In fixing the amount, the court is required in every case to have regard to the workman's or the dependent's necessities.

**§ 105. Denmark schedule.**—Date of enactment.—January 7, 1898, in effect January 15, 1899; amended May 15, 1903.

Injuries compensated.—All injuries by accident occasioned by the trade or its conditions, and causing either death or disability lasting over thirteen weeks, unless brought on intentionally or through gross negligence of the victim.

Industries covered.—Practically all establishments in mining, quarrying, manufactures, building and engineering work, transportation, telephone and telegraph services, diving and salvage; establishments using

mechanical power which makes them subject to factory inspection; other industrial establishments designated by the minister of interior.

Persons compensated.—All workmen in mechanical and technical departments, including those in supervisory capacity whose annual earnings do not exceed 2,400 crowns (\$643.20).

Government employes.—Act applies to all employes of state and the communal governments in industries above indicated.

Burden of payment.—Entire burden of payment rests upon employer.

Compensation for death:

(a) Funeral benefit of 50 crowns (\$13.40).

(b) A lump sum equal to four times annual earnings of deceased, but not over 3,200 crowns (\$857.60) nor less than 1,200 crowns (\$321.60), to—

Widow, whole amount, if she survives.

Child, whole amount, if it be the only heir.

Children, according to decision of insurance council, when there is no widow.

If neither widow nor children, insurance council decides whether and how far other heirs receive compensation.

Compensation for disability:

(a) From end of thirteenth week after accident until end of treatment, or until disability is declared permanent, a daily compensation of 60 per cent of earnings, but not less than 1 crown (27 cents) nor over 2 crowns (54 cents) for total disability, and a proportionate compensation for partial disability.

(b) In case of permanent disability an indemnity of six times annual earnings, but not less than 1,800 crowns (\$482.40) nor over

4,800 crowns (\$1,286.40) for total permanent disability, and proportionate payments for partial permanent disability.

- (c) If employé suffering from permanent disability is a male between 30 and 55 years of age, he may demand purchase of an annuity. For men of other ages, or of unsound mind, or women and children, the insurance council may substitute an annuity.

Revision of compensation.—Determination of degree of permanent disability must be made as soon as possible after one year from date of injury. If this be not possible, a temporary determination may be made, but a redetermination may be demanded within two years following.

Insurance.—Employers may transfer obligation imposed by the law, by insuring their employés in authorized insurance companies or mutual employers' insurance associations.

Security of payments.—Where liability under the law has not been transferred by insurance indemnity for disability is a preferred claim upon assets of employer.

Settlement of disputes.—Disputes concerning compensation, unless settled by mutual consent, must be referred to insurance council. Appeals may be had to the ministér of interior.

### § 106. Finland schedule.

Date of enactment.—December 5, 1895, in effect January 1, 1898.

Injuries compensated.—All injuries by accident during work, causing death or disability for more than six days, except when brought on intentionally or through gross negligence of victim, intentionally by any other person than the one charged with supervision of the

work, or caused by some other occurrence utterly independent of the nature of conditions of work.

Industries covered.—Mines, quarries, metallurgical establishments, factories, sawmills, industrial establishments using mechanical power, construction of churches and buildings over one story high; construction and operation of water, gas, electric power plants, and operation of railroads.

Persons compensated.—All persons actually employed at work, but not those supervising only.

Government employés.—Act applies to employment on the state and communal construction works and state railways.

Burden of payment.—Entire burden of payment rests upon employer.

Compensation for death.—In addition to any prior payments on account of disability, pensions to dependent heirs, from day of death, not exceeding 40 per cent of annual earnings of deceased, to—

- (a) Widow, 20 per cent until death or remarriage; in latter case a final sum equal to two annual payments.
- (b) Each child until the age of 15 years, 10 per cent if one parent survives, and 20 per cent if neither parent survives.
- (c) In computing pensions, earnings of workman to be considered not over 720 marks (\$138.96) nor under 300 marks (\$57.90); but no adult employé to receive a pension greater than his actual earnings.

Compensation for disability:

- (a) A pension equal to 60 per cent of employé's earnings for total disability, or a pension proportionate to the degree of incapacity for partial disability, to be paid from day of recovery from illness due to injury, or after 120 days have elapsed since injury.

- (b) Pension may by mutual consent be replaced by single payment, if it does not exceed 20 marks (\$3.86) annually.
- (c) In computing pension, earnings of workman to be considered not over 720 marks (\$138.96) nor under 300 marks (\$57.90); but no adult employé to receive a pension greater than his actual earnings.
- (d) In cases of temporary disability (including all cases of disability for 120 days after injury) daily compensation of 60 per cent of earnings, beginning with seventh day after accident, for complete temporary disability, and a proportionate compensation for partial disability; but not more than 2.50 marks (48 cents) per diem.
- (e) Until recovery, injured employé may be given treatment in a hospital in lieu of other compensation; during such treatment his wife and children get a compensation equal to pension in case of death.

Revision of compensation.—Demands for revision of compensation may be made by either party before proper court.

Insurance.—Employers are required to transfer the burden of payment of compensation to a governmental insurance office, private insurance company, mutual employers' insurance association, or approved foreign insurance company, unless unable to obtain such insurance or released from this obligation on presentation of satisfactory guarantees.

Security of payments.—When exempted from the duty of insuring his employés, or unable to obtain insurance, the employer must guarantee payment of pension to the injured workman or his family by arrangement with a private insurance company.



Settlement of disputes.—In case of absence of insurance or dissatisfaction with decision of insurance company, injured employé or his dependent may carry the case into the inferior court of the locality.

**§ 107. French schedule.**

Date of enactment.—April 9, 1898, in effect July 1, 1899; amendatory and supplementary acts March 22, 1902; March 31, 1905; April 12, 1906, and July 17, 1907.

Injuries compensated.—All injuries by accident to workmen or salaried employés during or on account of labor causing death or disability for five or more days, unless produced intentionally by the victim. If due to inexcusable fault of victim or of employer, compensation may by a court order be decreased or increased, but not exceeding actual earnings of victim.

Industries covered.—Building trades, factories, workshops, shipyards, transportation by land and water, public warehouses, mining and quarrying, manufacture or handling of explosives, agricultural and other work using mechanical power, and mercantile establishments; other industries on request of both parties.

Persons compensated.—All workmen and salaried employés.

Government employés.—Law applies to state, departmental, and communal establishments when engaged in industries enumerated above.

Burden of payment.—Entire cost of compensation falls upon employer.

Compensation for death:

- (a) Funeral expenses not exceeding 100 francs (\$19.30).
- (b) Pensions to dependent heirs not exceeding 60 per cent of annual wages of deceased, distributed to—

Widow or widower, 20 per cent until death

or remarriage, in which latter case a final sum equal to three annual payments.

Children under 16 years of age, if one parent survives—15 per cent if there is but one child; 25 per cent if there are two children; 35 per cent if there are three children; 40 per cent if there are four or more children. Each child under 16 years of age if neither parent survives, 20 per cent.

Each ascendant and each descendant under 16 years of age dependent upon deceased, if no widow or children survive, 10 per cent, the aggregate not to exceed 30 per cent.

- (c) If annual wages exceed 2,400 francs (463.20), only one-fourth of the excess is considered in computing pensions.

Compensation for disability:

- (a) Expenses of medical or surgical treatment.
- (b) If permanently disabled, a pension of 66 2-3 per cent of annual wages for total disability and of one-half loss of earning capacity for partial disability; or, if demanded, one-fourth capital value of pension in cash, the pension to be reduced accordingly.
- (c) If temporarily disabled, an allowance of 50 per cent of daily wages, beginning with fifth day, and including Sundays and holidays, unless disability lasts more than ten days, when payments become due from the first day.
- (d) If annual wages exceed 2,400 francs (\$463.20), only one-fourth of the excess is considered in computing pensions.
- (e) Payments of pensions of not over 100 francs (\$19.30) per annum may, by mu-

tual consent when beneficiary is of age, be replaced by a cash payment.

Revision of compensation.—Revision of compensation because of aggravation or diminution of disability of victim may be made within three years.

Insurance.—Employers may transfer burden of payment of compensation to approved mutual aid, accident insurance, or guaranty association, or, in ease of pensions, to national accident insurance or national old-age pension funds.

Security of payments.—The state guarantees against loss of pension payments on account of insolvency of employers or insurance organizations, and is reimbursed by a special tax on employers within scope of the act. For temporary disability payments, medicines, and medical or surgical attendance, and funeral expenses of the victim, his creditors or representatives have a preferred claim on property of employer.

Settlement of disputes.—Disputes as to pensions or involving more than 300 francs (\$57.90) may be carried into higher civil courts. Judgments of local justice of the peace is final in other cases.

### § 108. German schedule of compensation and scope of act.

Date of enactment.—July 6, 1884, in effect October 1, 1885. Supplementary acts May 28, 1885; May 5, 1886; July 11 and 13, 1887. A codification enacted June 30, 1900 and July 19, 1911.

Injuries compensated.—Injuries by accident in the course of the employment, causing death or disability for more than three days, unless caused intentionally. Compensation may be refused or reduced if injury was received while committing an illegal act.

Industries covered.—Mining, salt works, quarrying and allied industries, ship yards, factories, smelting works, building trades, chimney sweeping, window

cleaning, butchering, transportation and handling, agriculture, forestry, and fisheries.

Persons compensated.—All workmen, and those technical officials whose annual earnings are less than 3,000 marks (\$714). With the approval of the Imperial Insurance Office the law may be extended to other classes.

Government employés.—Act covers government employés in postal, telegraph, and railway services and in industrial enterprises of army and navy, unless otherwise provided for.

Burden of payment.—Medical and surgical treatment for ninety-one days and benefit payments from third to ninety-first days are provided by sick-benefit funds, to which employers contribute one-third and employés two-thirds; from twenty-eighth to ninety-first day payments are increased by one-third at expense of employer in whose establishment accident occurred; after ninety-first day and in case of death from injuries expense is borne by employers' associations supported by contribution of employers.

Compensation for death:

- (a) Funeral benefits of one-fifteenth of annual earnings of deceased, but not less than 50 marks (\$11.90).
- (b) Pensions to dependent heirs not exceeding 60 per cent of annual earnings of the deceased, as follows: Widow, 20 per cent of annual earnings until death or remarriage; in latter case a final sum equal to three annual payments; dependent widower, 20 per cent of annual earnings; each child 15 years of age or under, 20 per cent; payments to consort and to children to be reduced proportionately, if the total would exceed 60 per cent; dependent heirs in ascending line, 20 per cent or less, if there

is a residue after providing for above heirs; orphan grandchildren, 20 per cent or less, if there is a residue after providing for above heirs.

- (c) If annual earnings exceed 1,500 marks (\$357), only one-third of excess is considered in computing pensions.

Compensation for disability:

- (a) Free medical and surgical treatment paid first thirteen weeks by sick-benefit funds, and afterwards by employers' associations.
- (b) For temporary or permanent total disability, 50 per cent of daily wages of persons similarly employed, but not exceeding 3 marks (71 cents), paid by sick-benefit funds from third day to end of fourth week; from fifth to end of thirteenth week, above allowance by sick-benefit fund plus 16 2-3 per cent contributed by employer direct; after thirteen weeks, 66 2-3 per cent of average annual earnings of injured person paid by employers' associations.
- (c) For complete helplessness, necessitating attendance, payments may be increased to 100 per cent of annual earnings.
- (d) For partial disability, a corresponding reduction in payments.
- (e) If annual earnings exceed 1,500 marks (\$357), only one-third of excess is considered in computing pensions.

Revision of payments.—Whenever a change in condition of injured person occurs a revision of benefits may be made.

Insurance.—Payments are met by mutual insurance associations of employers, in which all employés are required to be insured at the expense of employers. Sep-

arate associations have been organized for each industry.

Security of payments.—Solvency of employers' associations is guaranteed by the state.

Settlement of disputes.—Disputes are settled by "arbitration courts for workingmen's insurance," composed of one government official, two representatives of workmen, and two of employers.

### § 109. Great Britain schedule.

Date of enactment.—December 21, 1906, in effect July 1, 1907; replacing acts of August 6, 1897, and July 30, 1900.

Injuries compensated.—Injuries by accident arising out of and in the course of employment which cause death or disability a workman for at least one week from earning full wages at the work at which he was employed. Compensation is not paid when injury is due to serious and willful misconduct, unless it results in death or serious and permanent disablement.

Industries covered.—"Any employment."

Persons compensated.—Any person regularly employed for the purposes of the employer's trade or business whose compensation is less than £250 (\$1,216.63) per annum; but persons engaged in manual labor only are not subject to this limitation.

Government employés.—Act applies to civilian persons employed under the Crown to whom it would apply if the employer were a private person.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

- (a) A sum equal to three years' earnings, but not less than £150 (\$729.98) nor more than £300 (\$1,459.95), to those entirely dependent on earnings of deceased.
- (b) A sum less than above amount if deceased

leaves persons partially dependent on his earnings, amount to be agreed upon by the parties or fixed by arbitration.

- (c) Reasonable expenses of medical attendance and burial, but not to exceed £10 (\$48.67) if deceased leaves no dependents.

Compensation for disability:

- (a) A weekly payment during incapacity of not more than 30 per cent of employé's average weekly earnings during previous twelve months, but not exceeding £1 (\$4.87) per week; if incapacity lasts less than two weeks no payment is required for the first week.
- (b) A weekly payment during partial disability, not exceeding the difference between employé's average weekly earnings before injury and average amount which he is earning or is able to earn after injury.
- (c) Minor persons may be allowed full earnings during incapacity, but weekly payments may not exceed 10 shillings (\$2.43).
- (d) A sum sufficient to purchase a life annuity through the Post-office Savings Bank of 75 per cent of annual value of weekly payments may be substituted, on application of the employer, for weekly payments after six months; but other arrangements for redemption of weekly payments may be made by agreement between employer and employé.

Revision of benefits.—Weekly payments may be revised at request of either party, under regulations issued by the secretary of state.

Insurance.—Employers may make contracts with employés for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act

if the registrar of friendly societies certifies that the scheme is not less favorable to the workmen and their dependents than the provisions of the act, and that a majority of the workmen are favorable to the substitute. The employer is then liable only in accordance with the provisions of the scheme.

Security of payments.—In case of employer's bankruptcy, the amount of compensation due under the act, up to £100 (\$486.65) in any individual case, is classed as a preferred claim; or where an employer has entered into a contract with insurers in respect of any liability under the act to any workman such rights of the employer, in case he becomes bankrupt, are transferred to and vested in the workman.

Settlement of disputes.—Questions arising under the law are settled either by a committee representative of the employer and his workmen by an arbitrator selected by the two parties, or, if the parties can not agree, by the judge of the county court, who may appoint an arbitrator to act in his place.

### § 110. Greek schedule of compensation and scope of act.

Date of enactment.—February 21 (March 6), 1901, in effect (retroactively) December 20, 1900 (January 2, 1901).

Injuries compensated.—All injuries by accidents during or because of the employment and causing death or disability lasting more than four days, unless brought on intentionally by the injured person.

Industries covered.—Mines, quarries, and metallurgical establishments.

Persons compensated.—All workingmen and subordinate salaried persons.

Government employés.—No mention of government employés is made in the law.

Burden of payment.—Employer carries full burden



of payment of indemnities during first three months; after three months, half the payments of pensions are contributed by the miners' fund, which is mainly supported by a tax on the mines and metallurgical establishments, but partly by contributions from the workmen's mutual aid societies in these establishments and some minor sources.

Compensation for death:

- (a) If death occurs immediately or within three months: (1) Funeral expenses amounting to 60 drachmas (\$11.58); (2) pensions to heirs aggregating pension paid for total disability.
- (b) If death occurs three months after injury or later, pensions to heirs aggregating 75 per cent of pension paid during life of the injured.
- (c) All pensions to heirs are distributed as follows: Equal share to widow and children, or, in absence of widow and children, equal share to father and mother.
- (d) Pension to widow ceases on her remarriage; to male children at 16 years of age; to female children on their marriage, with payment of one year's pension as a dowry.
- (e) If only one heir survives, he is entitled to only one-half of original pension.

Compensation for disability:

- (a) Free medical and surgical treatment.
- (b) An allowance of 50 per cent of earnings of injured employé during first three months.
- (c) If permanently disabled, a pension of 50 per cent of earnings in case of total disability (including loss of a hand or foot); in case of partial disability, a pension of 33 1-3 per cent of earnings, pension payments to begin after end of third month.

- (d) Pension may not exceed 100 drachmas (\$19.30) per month plus 25 per cent of the excess of computed pension over 100 drachmas (\$19.30).
- (e) In computing pension of apprentices and children, no wage is to be considered less than 2.50 drachmas (48 cents) per day.

Revision of compensation.—Injured employé may present a new petition, or the council of the miners' fund may order a new examination, whenever there is reason to believe that changes have occurred in the degree of disability.

Insurance.—No provision is made by the law for the transfer of the burden of payment of compensation by insurance.

Security of payments.—The miners' fund guarantees payment of pensions and other allowances, and has preferred claim upon employer's assets in cases of dissolution or forced sale of establishment, and also in cases of voluntary transfer, unless the new proprietor assumes the obligations under the law.

Settlement of disputes.—Amount of pension is settled by the council of the miners' fund, and appeals against its decisions may be carried into the ordinary courts.

### § 111. Hungarian schedule.

Date of enactment.—April 9, 1907, in effect July 1, 1907.

Injuries compensated.—Injuries by accident in the course of the employment causing death or disability for more than three days. Injuries caused intentionally are not compensated unless fatal.

Industries covered.—All factories subject to inspection, mines, quarries, metallurgical establishments, building trades, lumbering, construction work, ship-building, slaughterhouses, pharmacies, sanatoria, theaters, institutes of art and science.

Persons compensated.—All employés in industries enumerated.

Government employés.—Act covers government employés in state, municipal, and communal industries enumerated above.

Burden of payment.—All benefits and cost of treatment for first ten weeks provided by sick funds to which employers and employés contribute equally. Beginning with eleventh week entire cost is defrayed by employers through the accident fund.

Compensation for death:

- (a) Funeral benefit of twenty times average daily wages.
- (b) Pensions to heirs not exceeding 60 per cent of annual earnings of deceased, as follows—

Widow, 20 per cent of annual earnings until death or remarriage; in latter case a final sum equal to 60 per cent of annual earnings; or to dependent widower 20 per cent during disability.

Each child 16 years of age or under, 15 per cent if one parent survives, 30 per cent if neither survives; payments to consort and children reduced proportionately if they aggregate more than 60 per cent.

Dependent parents and grandparents if there is a residue after providing for above heirs, 20 per cent or less.

Dependent orphan grandchildren 15 years of age or under, if there is a residue after providing for above heirs, 20 per cent or less.

- (c) In computing pensions the excess of annual earnings above 2,400 crowns (\$487.20) is not considered.

Compensation for disability:

- (a) Free medical and surgical treatment pro-

vided first ten weeks by sick fund, and afterwards by accident fund.

- (b) For temporary or permanent total disability, 50 per cent of average daily wages but not exceeding 4 crowns (81 cents) for first ten weeks, provided by sick fund; beginning with eleventh week, 60 per cent of average annual earnings, provided by accident fund.
- (c) For complete helplessness necessitating attendance payments may be increased to 100 per cent of annual earnings.
- (d) For partial disability a corresponding portion of full pension.
- (e) In computing pensions the excess of annual earnings above 2,400 crowns (\$487.20) is not considered.

Revision of compensation.—Whenever a change in condition of injured person occurs the accident fund or the injured person may ask for a revision of the benefits.

Insurance.—Payments are met by a state insurance institution, in which all employés are required to be insured at the expense of employers.

Security of payment.—Guaranteed by the state.

Settlement of disputes.—Disputes are settled by arbitration courts, consisting of a presiding judge and an equal number of representatives of workmen and employers.

### § 112. Italian schedule.

Date of enactment.—March 17, 1898, in effect September 17, 1898. Amended June 29, 1903. Promulgated in codified form January 31, 1904.

Injuries compensated.—All injuries sustained by workmen or salaried employés during or on account of labor. If due to wilful misconduct, employer may be reimbursed through criminal action.

Industries covered.—Mines, quarries, building trades; light, heat, and power plants; arsenals; maritime construction work; transportation; industries requiring the use or handling of explosives; all industrial or agricultural work in proximity to power machinery; where more than five persons are employed in engineering construction work; operations for protection against landslides, floods, hailstorms; logging and timber rafting, and shipbuilding.

Persons compensated.—All workmen and apprentices and overseers receiving not more than 7 liras (\$1.35) per day and paid at intervals of one month or less.

Government employés.—Act applies to employment in state, provincial and communal industries enumerated above unless specially provided for, and to work performed for a government institution under contract or concession.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death.—If within two years after the accident, five times annual wages of deceased workman, with a maximum of 10,000 liras (\$1,930), distributed to—

- (a) Surviving consort two-fifths or indemnity if there are children; one-half of indemnity if there are dependent ascendants; three-fifths of indemnity if only dependent brothers or sisters; entire indemnity in absence of heirs enumerated.

Children, amounts sufficient to purchase an annuity of equal amount for each child under 12 years of age, and one-half of such annuity for each child from 12 to 18 years of age.

Each dependent parent or grandparent, if

there are no children, annuity of equal amount for life.

Dependent brothers or sisters less than 18 years of age or incapable of performing labor by reason of a mental or physical defect, if there are no children or dependent ascendants, annuities distributed upon same principle as in case of children.

- (b) In absence of heirs indemnity is turned into a special fund for immediate aid to injured, payment of indemnities for insolvent employers, and prevention of accidents.

Compensation for disability:

- (a) Cost of first medical and surgical treatment.
- (b) An indemnity in case of permanent disability or six times annual earnings, but not less than 3,000 liras (\$579) if totally disabled, and six times the loss of annual earning capacity if partially disabled, earnings in latter case to be considered as not less than 500 liras (\$96.50).
- (c) A daily allowance in case of temporary disability of one-half the wages of injured workman, payable for not more than three months, if totally disabled, and equal to one-half the reduction in wages occasioned by the injury, if partially disabled.

Revision of compensation.—Both workman and insurer may ask for a revision of compensation within two years after accident.

Insurance.—Employers must insure their employés in (a) the national accident insurance fund, (b) an authorized insurance company, (c) an association of employers for mutual insurance against accidents, or (d) a private employers' insurance fund.

Security of payments.—Payments are guaranteed by state.

Settlement of disputes.—In cases of dispute concerning temporary disability payments, the council of prud-hommes or the pretor of the locality in which the accident occurred has authority to sit in final judgment if amount involved does not exceed 200 liras (\$38.60). Disputes involving larger amounts are referred for settlement to the local magistrates.

**§ 113. Luxemburg schedule.**

Date of enactment.—April 5, 1902, in effect April 15, 1903. Sick insurance law enacted July 31, 1901.

Injuries compensated.—All injuries by accidents during or because of the employment, resulting in death or disability for more than three days, unless caused intentionally by the victim or during the commission of an illegal act.

Industries covered.—Mines, quarries, manufactories, metallurgical establishments; gas and electric works; transportation and handling; building and engineering construction, and certain artisans' shops having at least five employés regularly and using mechanical motive power. By administrative order other establishments may become subject to the law if regarded dangerous.

Persons compensated.—Workmen and those supervising and technical officials whose annual earnings are less than 3,000 francs (\$579). Certain other classes of persons may be voluntarily insured.

Government employés.—Act applies to government telegraph and telephone services, public works conducted by public agencies, and other governmental industrial establishments, unless other provisions are made for pensioning employés. Penal institutions are not included.

Burden of payment.—Benefits and cost of treatment first thirteen weeks provided by sick benefit funds, to which employers contribute one-third and employés two-thirds, if injured person is insured against sickness;

if not, because employed less than one week, by an accident insurance association supported by contributions of employers; if not insured for other reasons, by the employer direct; all benefits and treatment after thirteen weeks paid by accident insurance association.

Compensation for death:

(a) Funeral expenses, one-fifteenth of the annual earnings, but not less than 40 francs (\$7.72) nor more than 80 francs (\$15.44).

(b) Pensions, not to exceed 60 per cent of earnings of deceased, to—

Widow, 20 per cent until death or remarriage; in the latter case a lump sum equal to 60 per cent; same payment to a dependent widower.

Each child, 20 per cent until 15 years of age, even if father survives, provided he abandoned them, or the mother who was killed was their main support.

Dependent heirs in an ascending line, 20 per cent.

Dependent orphan grandchildren, 20 per cent until 15 years of age.

Widow and children have the preference over other heirs.

(c) In computing pensions only one-third of excess of annual earnings over 1,500 francs (\$289.50) is considered.

Compensation for disability:

(a) Entire cost of medical and surgical treatment.

(b) For temporary or permanent total disability, from third day to end of fourth week, 50 per cent, and from fifth to end of thirteenth week, 60 per cent of wages of persons similarly employed; after thirteen



weeks, 66 2-3 per cent of annual earnings of injured person.

- (c) For partial disability a portion of above (depending upon degree of disability), which may be increased to full amount as long as injured employé is without employment.
- (d) Lump sum payments may be substituted for pensions when degree of disability is not greater than 20 per cent.
- (e) In computing pensions only one-third of excess of annual earnings over 1,500 francs (\$289.50) is considered.

Revision of compensation.—Demands for change of amount of compensation may be made within three years.

Insurance.—Payments are met by mutual accident insurance association of employers in which all employés must be insured at expense of employers.

Security of payments.—Insurance association conducted under state supervision.

Settlement of disputes.—Appeals from the decisions of the association may be carried within forty days to a justice of the peace, who is required to invite two delegates, representing employer and employé, to assist in an advisory capacity. Further appeals may be taken to the higher courts.

#### § 114. Netherlands schedule.

Date of enactment.—January 2, 1901, in effect June 1, 1901. Other acts February 3 and December 8, 1902, and July 24, 1903.

Injuries compensated.—All injuries caused by accident in the course of the employment and causing death or disability for over two days, unless brought on intentionally. If due to intoxication, compensation is reduced one-half, and if death results no compensation is paid.

Industries covered.—Practically all manufacturing, mining, quarrying, building, engineering construction, and transportation; fishing in internal waters; establishments using mechanical motive power, or explosive or inflammable materials, and mercantile establishments handling such materials.

Persons compensated.—All workmen, including apprentices.

Government employés.—All state, provincial, and communal employés are included when engaged in any of the industries enumerated.

Burden of payment.—The entire expense rests upon the employer.

Compensation for death:

(a) Funeral benefit of thirty times average daily earnings of deceased.

(b) Pensions to heirs of not over 60 per cent of earnings of deceased, distributed to—

Widow, 30 per cent of earnings, until death or remarriage; in latter case two years' payments as a settlement; or to dependent widower, a pension equal to cost of support, but not over 30 per cent of earnings of deceased.

Each child under 16 years of age, 15 per cent if one parent survives and 20 per cent if both are dead.

Dependent parents, and in their absence to grandparents, not over 30 per cent.

Orphan grandchildren, not over 20 per cent.

Dependent parents-in-law, not over 30 per cent.

Widow and children to be preferred over all other heirs, and their respective shares to be reduced proportionately when aggregating over 60 per cent.

(c) In computing pensions, wages higher than

four florins (\$1.61) per day are to be considered as of that amount.

**Compensation for disability:**

- (a) Free medical and surgical treatment, or its cost.
- (b) From day after injury until forty-third day, an allowance of 70 per cent of daily earnings, excluding Sundays and holidays.
- (c) From forty-third day a pension of above amount during total disability and a smaller pension in proportion to loss of earning power if partially disabled.
- (d) In computing pensions, wages higher than four florins (\$1.61) per day are to be considered as of that amount.

**Revision of compensation.**—An examination of condition of victim may be made whenever the Royal Insurance Bank so desires.

**Insurance.**—Employers may insure their employés in the Royal Insurance Bank (a state institution), in a private company or association operating under state supervision, or they may carry the burden themselves. If not insured in the Royal Insurance Bank, a sufficient guaranty must be deposited with the latter. Employers must bear a proportionate share of the expense of administration of the Royal Insurance Bank, whether they insure in it or not.

**Security of payments.**—Compensation payments are guaranteed by the state.

**Settlement of disputes.**—Appeals may be taken from decisions of the Royal Insurance Bank to local arbitration councils, in which employers and employés are equally represented, and from them to a central arbitration council whose decisions are final.

**§ 115. New Zealand schedule.**

**Date of enactment.**—October 18, 1900, to take effect

at a date fixed by the governor by order in council. Amended October 3, 1902, November 23, 1903, November 8, 1904, October 31, 1905, and October 29, 1906.

Injuries compensated.—All injuries to workmen arising out of and in the course of the employment causing death or disability for at least one week, except when due to serious and willful misconduct of the workman injured.

Industries covered.—Industrial, commercial, manufacturing, building, agricultural, pastoral, mining, quarrying, engineering, and hazardous work carried on by or on behalf of the employer as a part of his trade or business.

Persons compensated.—All persons under contract with an employer.

Government employés.—Act applies to work carried on by or on behalf of the government or any local authority if it would, in case of a private employer, be an employment to which the act applies.

Burden of payment.—Entire cost of compensation rests upon employer; but if there are contractors, then on such contractors and the principal, jointly and severally.

Compensation for death:

- (a) A sum equal to three years' earnings, but not less than £200 (\$973.30) nor more than £400 (\$1,946.60), to those wholly dependent upon earnings of deceased.
- (b) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by a magistrate or by the arbitration court.
- (c) Reasonable expenses of medical attendance and burial, not exceeding £30 (\$146), in case deceased leaves no dependents.

Compensation for disability:

- (a) A weekly payment during disability not ex-

ceeding 50 per cent of employé's average weekly earnings during the previous twelve months, but not to exceed £2 (\$9.73) nor to fall below £1 (\$4.87) where employé's ordinary rate of pay at time of accident was not less than 30 shillings (\$7.30) per week. Total liability of employer is limited to £300 (\$1,459.95). No payment is made for first week if disability does not continue for a longer period than two weeks.

- (b) A lump sum may be substituted for weekly payments for permanent total or partial disability, to be agreed on by the parties or, in default of agreement, determined by the court of arbitration.

Revision of benefits.—Weekly payments may be revised at request of either party.

Insurance.—Employers may contract with their employés for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act if the scheme is shown to be not less favorable to the general body of employés and their dependents than the provisions of the act. In such case the employer is liable only in accordance with the scheme.

Security of payments.—When an employer becomes liable under this act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of his becoming insolvent, such workman has a first claim upon this sum. Compensation for injuries sustained in the course of employment in or about a mine, factory, building, or vessel is deemed a charge upon the employer's interest in such property and has priority over all charges other than those lawfully existing at the time of the commencement of the act.

Settlement of disputes.—Disputes arising under the

act are settled by the court of arbitration under the industrial arbitration act. Where claim for compensation does not exceed £200 (\$973.30) proceedings may be instituted before a magistrate whose decision is final, except that in cases where amount involved does not exceed £50 (\$243.33) either party may, with the consent of the magistrate, and in cases where the claim exceeds £50 (\$243.33), without such consent, appeal from the decision on any point of law.

**§ 116. Norwegian schedule of compensation and scope of act.**

**Date of enactment.**—July 23, 1894, in effect July 1, 1895.

**Injuries compensated.**—All injuries by industrial accidents, causing death, or disability, for more than four weeks, or requiring treatment after that period, unless intentionally brought about by the injured person.

**Industries covered.**—Practically all factories and workshops using other than hand power; mines and quarries; the handling of ice, explosives, or inflammable wares; building and engineering construction, electric work, transportation, salvage, and diving, chimney sweeping, and fire extinguishing. Employés in other industries may avail themselves of this insurance system.

**Persons compensated.**—All workingmen and overseers.

**Government employés.**—Act covers employés in government or communal service, when engaged in any of the industries enumerated above, unless at least equal compensation is provided by special regulation.

**Burden of payment.**—Cost of compensation rests upon employer.

**Compensation in case of death:**

- (a) Funeral benefit of 50 crowns (\$13.40).
- (b) Pensions to heirs not exceeding 50 per cent of earnings, to be distributed to—

Widow, 20 per cent of earnings, until death or remarriage; in the latter case a lump sum equal to three annual payments; or dependent widower, 20 per cent of annual earnings of deceased while disability lasts.

Each child, 15 per cent of annual earnings till age of 15 years if one parent survives, or 20 per cent if neither survives; 15 per cent for each parent to each child when both parents have died as result of injuries.

Dependent relatives in ascending line, if there is a residue after providing for above-mentioned heirs, a pension of 20 per cent of earnings until death or cessation of need, to be divided equally; but living parents exclude grandparents from participation.

(c) In computing pensions, the excess of annual earnings over 1,200 crowns (\$321.60) is not considered.

(d) Pension payments are in addition to prior allowances granted for disability.

Compensation for disability:

(a) Free medical and surgical treatment, or cost of same, after four weeks.

(b) If employé is totally disabled for more than four weeks an allowance of 60 per cent of the earnings, but not less than 0.50 crowns (13 cents) per diem or 150 crowns (\$40.20) per annum; and a proportionate allowance in case of partial disability.

(c) If injured employé is forced to stay in a hospital, dependents receive allowances during that time equal to the pensions granted in cases of death.

(d) If injured employé is not a member of a sick insurance fund he is entitled to receive

from employer directly sick benefits and free medical treatment from first day of injury.

- (e) In computing allowances the excess of annual earnings over 1,200 crowns (\$321.60) is not considered.

Revision of compensation.—Compensation is subject to revision upon demand of either the beneficiary or the insurance office.

Insurance.—A state central insurance office is established for the entire Kingdom, in which all employes subject to the law must be insured by employer, unless he is, for special reasons, relieved by royal order from the obligation of insurance.

Security of payments.—Insurance office is guaranteed by the state.

Settlement of disputes.—Appeals from decisions of insurance office may be entered within six weeks with the special insurance commission.

# **§ 117. Queensland schedule of compensation and scope of act.**

Date of enactment.—December 20, 1905, in effect March 31, 1906.

Injuries compensated.—All injuries by accident, arising out of and in the course of the employment, which cause death or disable a workman for at least two weeks from earning full wages at the work at which he was employed, except when the injury is directly attributable to his serious and wilful misconduct, or when it occurs while proceeding to or from his place of work.

Industries covered.—Industrial, commercial, manufacturing, building, agricultural, pastoral, mining, quarrying, engineering, or hazardous work carried on by or on behalf of the employer as a part of his trade or business.

Persons compensated.—All persons under contract with an employer.



Government employés.—Act applies to any work carried on by or on behalf of the government or any local authority, if it would, in case of a private employer, be an employment to which the act applies.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

- (a) A sum equal to three years' earnings, but not less than £200 (\$973.30) nor more than £400 (\$1,946.60), to those wholly dependent upon earnings of deceased; but aged and infirm employés may agree in advance to accept a reduced amount.
- (b) A sum less than above if heirs are only partly dependent.
- (c) Reasonable expenses of medical attendance and burial, not exceeding £30 (\$146), if deceased leaves no dependents.

Compensation for disability:

- (a) A weekly payment during disability after second week, not exceeding 50 per cent of employé's average weekly earnings during the previous twelve months, such weekly payments not to exceed £1 (\$4.87), and total liability not to exceed £400 (\$1,946.60); except that aged and infirm employés may agree in advance to accept a reduced amount.
- (b) A weekly payment during partial disability after second week, not exceeding one-half of difference between the employé's average weekly earnings before the accident and the average weekly amount which he is earning or able to earn after injury.
- (c) Minors may be allowed full earnings during incapacity, not exceeding 10 shillings (\$2.43) weekly.

- (d) A lump sum may be substituted for weekly payments after three months, on application of employer, the amount to be agreed upon or, in default of agreement, to be determined by a police magistrate.

Revision of compensation.—Weekly payments may be revised by a police magistrate at request of either party.

Insurance.—Employers may contract with their employés for substitution of a scheme of compensation, benefit, or insurance, in place of the provisions of the act if the scheme is officially certified to be not less favorable to the employés and their dependents than the provisions of the act. In such case the employer is liable only in accordance with the scheme.

Security of payments.—When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a worker under such liability, then in the event of his becoming insolvent, such workman has a first claim upon this sum for the amount so due.

Settlement of disputes.—Disputes arising under the act are heard and determined by a police magistrate, whose decision is final, except that either party may appeal from this decision on any point of law with the latter's leave if the claim does not exceed £ 50 (\$243.33), or without his leave if it exceeds that amount.

### § 118. Russian schedule.

Date of enactment.—June 2 (15), 1903, in effect January 1 (14), 1904.

Injuries compensated.—All injuries by accident occasioned by or on account of the work and causing death or disability for more than three days, unless brought on intentionally by the victim or due to gross imprudence.

Industries covered.—Metallurgical and mining es-

tablishments and factories and workshops using other than hand power, but exclusive of shops of private railroad and steamship companies and certain rural industrial establishments.

Persons compensated.—Workmen and those technical officials whose annual earnings do not exceed 1,500 rubles (\$772.50).

Government employés.—Act applies to mining, metallurgical, and manufacturing establishments of municipal and zemstvo governments, but not to national government employés, for whom special regulations exist.

Burden of payment.—Entire burden of payment rests upon employer.

Compensation for death:

- (a) Funeral expenses not exceeding 30 rubles (\$15.45) for an adult and 15 rubles (\$7.73) for a child under 15 years of age.

- (b) Pensions to dependent heirs not exceeding 66 2-3 per cent of annual earnings of victim, distributed to—

Widow, 33 1-3 per cent until death or remarriage; in the latter case a lump sum equal to three annual payments.

Each child until age of 15 years, 16 2-3 per cent if one parent survives and 25 per cent if neither parent survives.

Dependent heirs in ascending line, 16 2-3 per cent.

Each dependent orphan brother and sister until 15 years of age, 16 2-3 per cent.

Widow and children take precedence over other dependent heirs, who share the remainder in equal parts.

- (c) Pension may, by mutual consent of employer and beneficiary, be replaced by single payment of ten times amount of an-

nual pension and, in case of children, pension multiplied by the number of years remaining for pension payments, but not exceeding ten.

Compensation for disability:

- (a) Free medical and surgical treatment or reimbursement of expense of same.
- (b) If permanently disabled, a pension of 66 2-3 per cent of annual earnings of victim in case of total disability, and a pension proportionate to degree of incapacity in case of partial disability, to be paid from time when degree of permanent disability was determined; if amount of pension exceeds that of previous allowance for temporary disability, difference between the two during the period of disability is paid to permanently injured employé.
- (c) Pension may, by mutual consent of employer and beneficiary, be replaced by a single payment of ten times amount of annual pension.
- (d) If temporarily disabled, an allowance of 50 per cent of actual wages of victim from day of accident until complete recovery from disability or the determining of degree of permanent disability.

Revision of compensation.—Demands for revision of payments or to secure a pension previously refused may be made by either party within three years.

Insurance.—Employers may transfer burden of payment of compensation by insuring their employés in authorized insurance companies or societies.

Security of payments.—On retiring from business employer must guarantee payments by insurance or by deposit with a state bank. In case of insolvency, payments constitute a preferred claim.

Settlements of disputes.—Disputes may be carried into courts as other civil cases. Such cases are exempt from court fees, the documents are free from stamp tax, and attorney's fees are fixed by law.

**§ 119. South Australian schedule.**

Date of enactment.—December 5, 1900, in effect not earlier than June 1, 1901.

Injuries compensated.—All injuries to workmen arising out of and in the course of the employment causing death or disability for at least one week, except when due to serious willful misconduct of the workman injured.

Industries covered.—Railways, waterworks, tramways, electric lighting works, factories, mines, quarries, engineering and building work, employments declared by a proclamation of the governor upon addresses from both houses of parliament to be dangerous or injurious to health or dangerous to life or limb, and agricultural pursuits where mechanical motive power is used.

Persons compensated.—All persons engaged in manual labor or otherwise.

Government employés.—Act applies to civilian persons employed under the Crown to whom it would apply if the employer were a private person.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

- (a) A sum equal to three years' earnings, but not less than £150 (\$729.98) nor more than £300 (\$1,459.95), to those wholly dependent upon earnings of deceased.
- (b) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by arbitration.
- (c) Reasonable expenses of medical attendance

and burial not exceeding £50 (\$243.33), if deceased leaves no dependents.

**Compensation for disability:**

- (a) A weekly payment during disability after first week, not exceeding 50 per cent of employé's average weekly earnings during the previous twelve months, such weekly payments not to exceed £1 (\$4.87) nor, in case of total incapacity, to be less than 7s. 6d. (\$1.83) per week, and total disability not to exceed £300 (\$1,459.95)
- (b) A weekly payment during partial disability after first week to be fixed with regard to difference between employé's average weekly earnings before the accident and average weekly amount which he is earning or able to earn after injury.
- (c) A lump sum not exceeding £300 (\$1,459.95) may be substituted for weekly payments, after six months, on application of either party, the amount to be settled by arbitration under the act in default of agreement.

**Revision of benefits.**—Weekly payments may be revised at request of either party.

**Insurance.**—Employers may contract with their employés for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act, if the public actuary certifies that the scheme is on the whole not less favorable to general body of employés and their dependents than the provisions of the act. In such case employer is liable only in accordance with the scheme.

**Security of payments.**—When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of

his becoming insolvent such workman has a first claim upon this sum, and any special magistrate may direct its payment into the savings bank to be applied to payment of compensations due.

Settlement of disputes.—Disputes arising under the act are settled by the arbitration of existing committees representative of employers and employés, or, if either party objects, by a single arbitrator agreed on by the parties, or, in absence of agreement, by a special magistrate. An arbitrator appointed by the magistrate has all the powers of a local court.

### § 120. Swedish schedule.

Date of enactment.—Approved July 5, 1901; in effect January 1, 1903; amended June 3, 1904.

Injuries compensated.—Injuries by accidents to workmen resulting from the employment and causing death or disability for more than sixty days, unless due to the wilful act or gross negligence of the victim or the wilful act of a third person who has neither the supervision nor the direction of the work.

Industries covered.—Practically all establishments engaged in forestry work, mining, quarrying, turf and ice cutting and handling, manufacturing, chimney sweeping, rafting, railway and tramway service, handling goods, building trades, conduit, road, and other construction work, and gas, electricity, and water distribution. Employers in other industries may insure their employés in the State Insurance Institute and thereby be placed under the provisions of the act. Employés in other industries may secure the protection of the act by insuring themselves in the State Insurance Institute.

Persons compensated.—Workmen and foremen.

Government employés.—Act applies to employés in the State and communal services when engaged in any of the industries enumerated above.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death.—When death results from the injury within two years—

- (a) Funeral benefit of 60 crowns (\$16.08).
- (b) Annual pensions not exceeding in the aggregate 300 crowns (\$80.40), to be distributed to widow, until remarriage 120 crowns (\$32.16); each child under 15 years of age, 60 crowns (\$16.08).

Compensation for disability:

- (a) If permanently disabled annual pension of 300 crowns (\$80.40) in case of total disability and a smaller sum, corresponding to loss of earning power in case of partial disability, pension to begin with sixty-first day of disability, or later if permanent character of the disability was not then established.
- (b) If temporarily disabled for more than sixty days, 1 crown (27 cents) per day, beginning with sixty-first day.

Revision of compensation.—Suit may be brought in a court of first instance by injured employé for a revision of compensation within two years from the date of the fixing of the same.

Insurance.—If an injured person receives an allowance or pension from an organization which is supported entirely or in part by the employer, or if the victim is insured in a private organization by his employer, the amounts received from such source may be deducted from payments required of employers under the act. Employers may transfer burden of payment of compensation by insuring in the State Insurance Institute, created for this purpose by the act, or in individual cases purchase annuities for pensioners from this institution. Other arrangements may be made between employers



and employés if the State Insurance Institute finds upon examination that they are not unfavorable to the employés.

**Security of payments.**—An employer may be required to furnish adequate security for the payment of the pension to cover the contingency of his neglecting to pay the same, of his retiring from business or leaving the country, or of his becoming insolvent. If he fails to furnish security he may be required to pay a lump sum equal to the capital value of the pension plus the payments and interest due, which amount, in the case of an injured employé, must be invested in the purchase of an annuity from the Royal Insurance Institute.

**Settlement of disputes.**—Disputes may be settled either by arbitration or by bringing suit in a court of first instance. The demand for arbitration must be made or the suit brought within two years after the accident, or, in case of fatal accidents, within two years after the death of the victim. If the action is against the State Institute, one year more is allowed.

### § 121. Spanish schedule.

**Date of enactment.**—January 30, 1900, in effect July 28, 1900.

**Injuries compensated.**—All injuries by accidents to employés in the course of and by reason of the employment causing death or disability. Compensation may be reduced if injured person was engaged in an illegal act.

**Industries covered.**—Manufacturing, mines, quarries, metallurgical establishments, construction work, industries injurious to health, transportation, gas and electric works, street cleaning, theatres, and agricultural and forestry establishments using power machinery.

**Persons compensated.**—Workmen performing manual labor, including helpers and apprentices.

**Government employés.**—Act applies to employés of

state factories and other government establishments, to labor accidents in war and naval departments, and to establishments of provincial and communal governments.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death.—In addition to any prior benefits paid for disability—

- (a) Funeral expenses not exceeding 100 pesetas (\$19.30).
- (b) A lump sum equal to two years' earnings if widow and children or dependent orphan grandchildren under 16 years survive; eighteen months' earnings if only children or orphan grandchildren survive; one year's earnings if only widow survives; ten months' earnings to dependent parents or grandparents over 60 years of age, in absence of widow or children, if two or more survive; seven months' earnings if only one parent or grandparent survives.
- (c) For these lump-sum payments, by mutual consent, the following pensions may be substituted: Forty per cent of annual earnings when widow and children or grandchildren survive; 20 per cent of annual earnings when only widow survives; 10 per cent to each dependent parent or grandparent over 60 years of age, when no widow or children survive, but not over 30 per cent in the aggregate; compensation to widow ceases on her remarriage and to children on their attaining the age of 16 years.
- (d) In these cases the daily earnings to be considered as not less than 1.50 pesetas (29 cents).

- (e) All of these compensations are increased by 50 per cent if the establishment is lacking in the required safety provisions.

Compensation for disability:

- (a) Free medical and surgical treatment during disability.
- (b) Fifty per cent of daily earnings, including Sundays and holidays, from day of injury to day of recovery from disability, but not over one year, after which case is treated as one of permanent disability.
- (c) In case of permanent disability, in addition to the foregoing, a sum equal to two years' earnings for total disability.

Eighteen months' earnings if total disability extends only to former trade.

One year's earnings in cases of partial permanent disability for usual employment, unless the employer agrees to employ injured workmen at some other work at old rate of wages.

- (d) In these cases the daily earnings to be considered as not less than 1.50 pesetas (29 cents).
- (e) Compensations are increased by 50 per cent if the establishment is lacking in the required safety provisions.

Revision of compensation.—No special provision is made in the law.

Insurance.—Employers may contract with authorized insurance companies to assume obligations imposed by law.

Security of payment.—No special provision is made in the law.

Settlement of disputes.—Disputes concerning compensation under the law may be carried to special perma-

ment labor tribunals consisting of representatives of the State, employers, and employés.

**§ 122. West Australia schedule of compensation and scope of act.**

Date of enactment.—February 19, 1912, in effect on a date fixed by the governor by order in council.

Injuries compensated.—All injuries caused to a workman arising out of and in the course of the employment causing death or disability for at least two weeks, except when due to serious and wilful misconduct of the workman injured.

Industries covered.—Railways, waterworks, tramways, electric-light plants, factories, mines, quarries, engineering and building work, and employments declared by a proclamation of the governor, issued pursuant to addresses from both houses of parliament, to be dangerous or injurious to health or dangerous to life or limb.

Persons compensated.—All persons engaged under contract in any employment.

Government employés.—Act applies to all persons employed under the Crown to whom it would apply if employer were a private person.

Burden of payment.—Entire cost of compensation rests upon employer.

Compensation for death:

- (a) A sum equal to three years' earnings, but not less than £200 (\$973.30), nor more than £400 (\$1,946.60), to those wholly dependent upon earnings of deceased.
- (b) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by local court.
- (c) Reasonable expenses of medical attendance

and burial, not to exceed £200 (\$485.65), if deceased leaves no dependents.

Compensation for disability:

- (a) A weekly payment during disability after second week, not exceeding 50 per cent of injured person's average weekly earnings during the previous twelve months, such weekly payment not to exceed £2 (\$9.73) and total liability not to exceed £300 (\$1,459.95).
- (b) In case of partial disability, regard is to be had to the difference between average weekly earnings before and after the accident and to any payment other than wages made by employer on account of the injury.
- (c) A lump sum may be substituted for weekly payments, after six months, on the application of the employer, the amount to be determined by the court in default of agreement.

Revision of benefits.—Weekly payments may be revised by the court at request of either party.

Insurance.—Employers may contract with their employes for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act, if the registrar of friendly societies certifies that the scheme is on the whole not less favorable to the general body of employes and their dependents than the provisions of the act. In such case employer is liable only in accordance with this scheme.

Security of payments.—When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurer on account of the amount due to a workman under such liability, then in the event of his becoming insolvent such workman has a first charge upon this sum for the amount so due. Compensation

for injuries sustained in the course of employment in or about a mine, factory, building, or vessel is deemed a charge on the employer's interest in such property.

Settlement of disputes.—Disputes arising under the act are settled by the local court of the district in which the injury is received.

## CHAPTER X.

### THE WASHINGTON WORKMEN'S INSURANCE ACT.

Sec.

- 123. The nature and scope of the Washington industrial insurance act.
- 124. The workmen's insurance act with its construction by the board.
- 125. Proposed amendment.
- 126. Constitutionality of the act.
- 127. Opinion of the court.
- 128. Rules and directions.
- 129. Rules and directions for employers.
- 130. Rules and directions for workmen.
- 131. Form of general directions to employés to be posted on all floors of plant.
- 132. Formal procedure—List of forms.
- 133. Form of report of actual payroll. (a)
- 134. Form of contractor's statement of wages. (b)
- 135. Form of monthly statement of city. (c)
- 136. Form of notice of assessment. (d)
- 137. Form of elective adoption of the provisions of act. (e)
- 138. Form of demand for first quarterly payment required by act. (f)
- 139. Form of monthly statement. (g)

Sec.

- 140. Alphabetical list of industries with rates and classification. (h)
- 141. Form of instructions to cities, counties, school, port, waterway, drainage, or other municipal corporation.
- 142. Form of letter of instructions to the employers and employés. (j)
- 143. Form of employer's report of accident to employé with chart. (k)
- 144. Workmen's claim for compensation. (l)
- 145. Form of instructions to injured workman. (l)
- 146. Form of report of attending physician with charts. (m)
- 147. Form of surgical discharge report. (n)
- 148. Form of report of witnesses. (o)
- 149. Surgeon's special report with charts. (p)
- 150. Form of proof of death by physician. (q)
- 151. Form of proof of death by undertaker. (r)
- 152. Form of dependent's claim for compensation. (s)
- 153. Affidavit to foregoing form.
- 154. Form of affidavit of claimant for compensation—

Sec.		Sec.	
	Survivors of deceased workmen. (t)	160.	Form of burial expense voucher—Account of deceased workman. (x)
155.	Form of summary and award. (u)	161.	Form of final settlement voucher. (y)
156.	Form of partial payment voucher—Permanent partial disability—Full payment—Total temporary disability—Partial payment. (v)	162.	Form of election to receive compensation and assignment of claim—Injuries by defaulting employer. (z)
157.	Form of partial payment voucher—Total temporary disability—Monthly allowance. (vv)	163.	Election to receive compensation and assignment of claim—Injury by other than employer. (zz)
158.	Form of pension voucher—Permanent total disability. (w)	164.	Statistical reports on the operation of the act.
159.	Form of pension voucher—Survivors of deceased workman. (ww)	165.	Review of the first eight months' operation of act.
		166.	Official state safety bulletin.

**§ 123. The nature and scope of the Washington industrial insurance act.**—The Washington Act covers all employers and employes of forty-eight extra hazardous employments which are specified in the act, and the act is compulsory in form as to all such employers and employes. All civil actions and civil causes of actions for personal injuries and all jurisdictions of the courts of the State over causes of action arising in said employments are abolished. This act, which is an example of progressive legislation along these lines, is set out in full in the following section, together with the Notes of Construction under each section of the same drafted by the commissioners. Since the constitutionality of the act has been sustained by the Supreme Court of the State (see section 127) these notes have the same binding effect upon all persons affected by the statute as the statute itself until overruled by the courts.

**§ 124. The workmen's insurance act with its construction by the board.**

Sec. 1. Declaration of police power.—The com-



mon-law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the State depends upon its industries, and even more upon the welfare of its wageworker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents, is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the State over such causes are hereby abolished, except as in this act provided.

**Note by board.**—The abolishing of jurisdiction of courts over personal injury claims applies only to those in the relation of employer and employé in "extra hazardous" occupations. Employés as members of the public have their rights against third persons as heretofore. Suits allowed against employer, see Sec. 8. Even though the injury or death be caused by the tort of a third person, the employé may obtain compensation by election and assignment, except where a wilful act of such other, committed against the employé, be for reasons personal and not because of his employment.

**Sec. 2. Enumeration of extra hazardous works.**—There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is in-

tended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the State, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; logging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

**Note by Board.**—Admiralty Jurisdiction, see Sec. 18.

Unlisted extra hazardous occupations will be included in existing classes whenever possible. Obviously, accidents in new and small classes might bankrupt employers included therein. Non-hazardous elective, Class 48.

**Sec. 3. Definitions.**—In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and premises which are a part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals; electric, steam or water power plants; telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this State in any extra hazardous work.

**Note by board.**—Employer includes owner, contractor, sub-

contractor, agent, municipality, see Sec. 17. Residence outside the State immaterial.

This act has no application where the United States is the employer. (Opinion Attorney General, Sept. 20, 1911.)

Workman means every person in this State, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: Provided, however, That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the State for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the State may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

**Note by board.**—Not in course of employment: Employer injured going to supper down log chute; employé left moving work train to enter saloon, injured attempting to regain train with bottles of beer; telephone lineman falling on wet steps going to lunch.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the payroll at a salary or wage not less than the average salary or wage named in such payroll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

**Note by board.**—Such person, including partners and stockholders, may elect to come under the act.

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz.: invalid child over the age of sixteen years, daughter, between sixteen and eighteen years of age, father, mother, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who, at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens, other than father or mother, not residing within the United States at the time of the accident, are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child," as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

**Note by board.**—Includes a step-child.

The words injury or injured, as used in this act, refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease.

**Note by board.**—Recent medical texts indicating that hernia

(rupture) ordinarily develops gradually, rarely as a result of accident, the department rules that a workman in order to be entitled to indemnity for hernia must clearly prove:

- (1) The hernia is of recent origin;
- (2) It must have been accompanied by pain;
- (3) It must have been immediately preceded by some accidental strain in the course of hazardous employment;
- (4) There must be conclusive proof that it did not exist prior to the date of the alleged injury.

In case the individual elects to be operated on, the above facts being established, one month total disability only will be allowed for recovery with compensation not to exceed 60% of wages in addition to the scale lump sum.

In case he does not elect to be operated upon, and the hernia becomes strangulated in the future, the results from said strangulation will not be indemnified.

Sec. 4. Schedule of contribution.—Insomuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the State treasury, in accordance with the following schedule, a sum equal to a percentage of his total payroll for that year,\* to-wit: (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

#### Construction Work.

Tunnels; bridges; trestles; sub-aqueous works; ditches and canals (other than irrigation without blasting); dock excavation; fire escapes; sewers; house moving; house wrecking -----	.065
Iron, or steel frame structures or parts of structures-----	.080
Electric light or power plants or systems; telegraph or telephone systems; pile driving; steam railroads-----	.050
Steeple, towers or grain elevators, not metal framed; dry-docks without excavation; jetties; breakwaters; chimneys; marine railways; water-works or systems; electric railways with rock work or blasting; blasting; erecting fireproof doors or shutters-----	.050
Steam heating plants; tanks, water towers or windmills, not metal frames-----	.040
Shaft sinking -----	.060

\*Act amended before passage requiring payment each month after Dec. 31, 1911, if funds on hand are deemed insufficient.

Concrete buildings; freight or passenger elevators; fire-proofing of buildings; galvanized iron or tin works; gas works, or systems; marble, stone or brick work; road making with blasting; roof work; safe moving; slate work; outside plumbing work; metal smokestacks or chimneys -----	.050
Excavations not otherwise specified; blast furnaces-----	.040
Street or other grading; cable or electric street railways without blasting; advertising signs; ornamental metal work in buildings-----	.035
Ship or boat building or wrecking with scaffolds; floating docks -----	.045
Carpenter work not otherwise specified-----	.035
Installation of steam boilers or engines; placing wire in conduits; installing dynamos; putting up belts for machinery; marble, stone or tile setting, inside work; mantel setting; metal ceiling work; mill or ship wrighting; painting of buildings or structures; installation of automatic sprinklers; ship or boat rigging; concrete laying in floors, foundations or street paving; asphalt laying; covering steam pipes or boilers; installation of machinery not otherwise specified-----	.030
Drilling wells; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems; glass setting; building hot houses; lathing; paper hanging; plastering; inside plumbing; wooden stair building; road making-----	.020

The absence of power driven machinery does not exempt occupations named in this subdivision, nor the small number of employes engaged, nor the short time required to accomplish the work.

#### Operation (including repair work) of

(All combinations of material take the higher rate when not otherwise provided.)

Logging railroads; railroads; dredges; interurban electric railroads using third rail system; dry or floating docks	.050
Electric light or power plants; interurban electric railroads not using third rail system; quarries-----	.040
Street railways, all employes; telegraph or telephone systems; stone crushing; blasting furnaces; smelters; coal mines; gas works; steamboats; tugs; ferries-----	.030
Mines, other than coal; steam heating or power plants-----	.025
Grain elevators; laundries; waterworks; paper or pulp mills; garbage works-----	.020

**Factories Using Power-Driven Machinery.**

Stamping tin or metal.....	.045
Bridge work; railroad car or locomotive making or repairing; cooperage; logging with or without machinery; saw mills; shingle mills; staves; veneer; box; lath; packing cases; sash, door or blinds; barrel, keg; pail; basket; tub; wooden ware or wooden fibre ware; rolling mills; making steam shovels or dredges; tanks; water towers; asphalt; building material not otherwise specified; fertilizer; cement; stone with or without machinery; kindling wood; masts and spars with or without Machinery; canneries, metal stamping extra; creosoting works; pile treating works.....	.025
Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified; working in wood not otherwise specified; hardware; tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware; peat fuel; brickettes .....	.020
Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified.....	.020
Cordage; working in food stuffs, including oils, fruits and vegetables; working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified...	.015
Making jewelry, soap, tallow, lard, grease, condensed milk...	.015
Creameries; printing; electrotyping; photo-engraving; engraving; lithographing .....	.015

**Miscellaneous Work.**

Stevedoring; longshoring .....	.030
Operating stock yards, with or without railroad entry; packing houses .....	.025
Wharf operation; artificial ice, refrigerating or cold storage plants; tanneries; electric systems not otherwise specified .....	.020
Theater stage employés.....	.015
Fire works manufacturing.....	.050
Powder works .....	.100

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the payroll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the



actual payroll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof before commencing operation; its amount shall be calculated upon his estimated payroll, an adjustment shall be made on or before February 1st of the following year in the manner above provided.

**Note by board.**—Preliminary payment on an estimated payroll required of new establishments, thereafter as assessed.

An establishment or business permanently dismantled or abandoned does not forfeit its "unearned premiums," but is entitled to a return of the excess payment by warrant against the Accident Fund. (Opinion Attorney General, Jan. 9, 1912.)

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the 1st day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: Provided, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments, said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund.

**Note by board.**—The provision for non-assessment of premium does not seem equitably to apply to owners and contractors in construction work (Classes 1 to 9, inclusive). Continuous monthly contribution is required to place operators in such work on the

same competitive plane as to bidding, advance ordering of material, etc., each contract thus providing for its average quota of injuries.

The intent of the law is that each of the forty-seven funds be automatic and self-adjusting. The rate is fixed; time of payment varies with the need. The actual premium (percentage of payroll) cannot be determined in advance. The proviso here was inserted as an amendment to the original bill; the first paragraph of Sec. 4, so far as inconsistent, to be disregarded.

The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the fund created under this section shall ultimately become neither more nor less than self-supporting, exclusive of the expense of administration, the rates in this section named are subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a gross misdemeanor.\* If, after this act shall have come into operation, it is shown by experience under the act, because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by change in the class of

\*Gross misdemeanor—penalty, imprisonment in county jail not more than one year, or by a fine not to exceed one thousand dollars or both. Rem. and Bal. Code, Sec. 2267; Sec. 15, Chap. 249, Laws 1909. The workman contributes nothing under this act; see Sec. 24.

work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year, it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

**Note by board.**—Contribution by employes to a Hospital Fund of an establishment not prohibited by this section; such funds to provide resident physician in remote camps, and procure first aid and competent care in sickness and injury. See Secs. 12, 13, 24.

For the purposes of such payment and making good of deficit the particular classes of industry shall be as follows:

### Construction Work.

Class 1. Tunnels; sewer; shaft sinking; drilling wells.

**Note by board.**—Includes all underground work of whatever character in connection with sewer construction, includes tunneling and shafting and work at the entrances thereof; also such work in open trenches exceeding six feet in depth, but not "excavations" as hereinafter defined.

"Excavations," rate 4 per cent.: Ditches less than six feet deep; where deeper than six feet, width must exceed half of depth.

Class 2. Bridges; mill wrighting; trestles; steeples, towers or grain elevators not metal framed; tanks; water towers, windmills not metal framed.

Includes assembling of parts and erection; excludes fabrication, manufacture. See Class 27.

Class 3. Sub-aqueous works; canal other than irrigation or docks with or without blasting; pile driving; jetties; breakwaters; marine railways.

Includes dock excavations,  $6\frac{1}{2}$  per cent. Ditches and canals, other than irrigation without blasting, rate  $6\frac{1}{2}$  per cent. where deeper than six feet and in width less than half of depth.

Class 4. House moving; house wrecking; safe moving.

Excludes ordinary operations of drayage and transfer companies.

Includes moving boilers, heavy machinery, etc., 5 per cent.

Class 5. Iron or steel frame structures or parts of structures; fire escapes; erecting fireproof doors or shutters; blast furnaces; concrete chimneys; freight or passenger elevators; fireproofing of buildings; galvanized iron or tin work; marble, stone or brick work; roof work; slate work; plumbing work; metal smokestacks or chimneys; advertising signs; ornamental metal work in buildings; carpenter work not otherwise specified; marble, stone or tile setting; mantel setting; metal ceiling work; painting of buildings or structures; concrete laying in floors or foundations; glass setting; building hot houses; lathing; paper hanging; plastering; wooden stair building.

Includes building metal, concrete or brick chimneys, 5 per cent.; construction of concrete buildings and tearing forms from walls, 5 per cent.; outside plumbing, rate 5 per cent., includes "roughing in," and side sewer work, except where underground; inside plumbing, 2 per cent., includes installation of bath tubs, etc.

Excludes iron or steel bridge construction (Class 2), 6½ per cent.

Class 6. Electric light and power plants or systems, telegraph or telephone systems; cable or electric railways with or without rock work or blasting; waterworks or systems; steam heating plants; gas works or systems; installation of steam boilers or engines; placing wires in conduits; installing dynamos; putting up belts for machinery; installation of automatic sprinklers; covering steam pipes or boilers; installation of machinery not otherwise specified; installing electrical apparatus or fire alarm systems in buildings; house heating or ventilating systems.

**Note by board.**—Includes placing wire in conduit, at 3 per cent.; blasting, 5 per cent.; clearing land with blasting, 5 per

cent.; installing furnaces in residences, etc., 2 per cent.; installation of machinery includes foundations for same.

**Class 7. Steam railroads; logging railroads.**

**Note by board.**—Includes operation of logging and other steam railroads, 5 per cent.

**Class 8. Road-making; street or other grading; concrete laying in street paving; asphalt laying.**

**Note by board.**—Includes road-making with blasting, 5 per cent.; concrete sidewalk laying, 3 per cent.; plank road, street or sidewalk construction or repair, 2 per cent.; new road grading including clearing (without blasting), 2 per cent.; brick or block paving and repair, 2 per cent.

Excludes maintenance of dirt roads without scrapers or machines.

**Class 9. Ship or boat building with scaffolds; shipwrighting; ship or boat rigging; floating docks.**

**Note by board.**—Includes construction of drydocks without excavation, 5 per cent.

**Operation (Including Repair Work) Of**

**Class 10. Logging; saw mills; shingle mills; lath mills; masts and spars with or without machinery.**

**Note by board.**—Includes pilers, manual laborers and planers on sawmill premises, and teamsters; stump-pulling with donkey engines,  $2\frac{1}{2}$  per cent.; booming logs or driving ties,  $2\frac{1}{2}$  per cent.

Excludes retail lumber yards operating without machinery.

"Class 11" omitted by the legislature.

**Class 12. Dredges; dry or floating docks.**

**Class 13. Electric light or power plants or systems; steam heat or power plants or systems; electric systems not otherwise specified.**

**Note by board.**—Excludes elevators and individual steam heating plants in office buildings, hotels, apartment houses, residences, retail and wholesale stores. (Opinion Attorney General, Sept. 8, 1911.)

**Class 14. Street railways.**

**Note by board.**—Includes interurban electric railroads, with third rail, 5 per cent.; without third rail, 4 per cent.

Class 15. Telegraph systems; telephone systems.

**Note by board.**—Includes line and repair work.

Excludes telephone and telegraph operators.

Class 16. Coal mines.

**Note by board.**—Excludes office force only.

Class 17. Quarries; stone crushing; mines other than coal.

**Note by board.**—Excludes teamsters hauling gravel not subjected to cave-in hazard or in contact with machinery.

Class 18. Blast furnaces; smelters; rolling mills.

Class 19. Gas works.

Class 20. Steamboats; tugs; ferries.

**Note by board.**—Admiralty Jurisdiction. See Sec. 18, note.

Class 21. Grain elevators.

**Note by board.**—Includes flouring mills, 2 per cent.; grain warehouses, chop and feed mills, 2 per cent.

Excludes threshing machine and hay baling outfits; merchandise warehouses without machinery.

Class 22. Laundries.

**Note by board.**—Excludes office force and drivers only.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works; fertilizer.

### **Factories (Using Power-Driven Machinery).**

Class 26. Stamping tin or metal.

Class 27. Bridge work; making steam shovels or dredges; tanks; water towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage; staves; veneer; box; packing cases; sash, door or blinds; barrel; keg; pail; basket; tub; wood ware or wood fibre ware; kindling wood; excelsior; working in wood not otherwise specified.

**Note by board.**—Includes planers, if independently operated, 2½ per cent.

Excludes teamsters in fuel yards not working around machines.

Class 30. Asphalt.

Class 31. Cement; stone with or without machinery; building material not otherwise specified.

**Note by board.**—Includes operation of gravel bunkers and gravel haulers, lime burning, cutting paving blocks, rate 2½ per cent.

Class 32. Canneries of fruits or vegetables.

Class 33. Canneries of fish or meat products.

**Note by board.**—Includes manufacturing dogfish oil, 2½ per cent.; contract work with third parties for pack at flat rate per case, Oriental or white labor, factory owner ruled primarily responsible.

Class 34. Iron, steel, copper, zinc, brass or lead articles or wares; hardware; boiler works; foundries; machine shops not otherwise specified.

**Note by board.**—Includes beveling glass, rate 2½ per cent.

Class 35. Tile; brick; terra cotta; fire clay; pottery; earthenware; porcelain ware.

**Note by board.**—Includes manufacture glass jars, insulators, etc.

Class 36. Peat fuel; brickettes.

Class 37. Breweries; bottling works.

**Note by board.**—Includes brewery teamsters and helpers, manufacture of ammonia and alcohol, 2 per cent.

Class 38. Cordage; working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.

**Note by board.**—Includes broom-making, 1½ per cent.

Class 39. Working in food stuffs, including oils, fruits, vegetables.

**Note by board.**—Includes candy and cracker factories, excluding only drivers and office force.

Class 40. Condensed milk; creameries.

Class 41. Printing; electrotyping; photo-engraving; engraving; lithographing; making jewelry.

**Note by board.**—Includes linotypers, compositors, proof readers and foremen in room with machinery or shafting; errand boys.

Excludes bookkeepers and office force, hand engravers not in room with machinery.

Class 42. Stevedoring; longshoring; wharf operation.

Class 43. Stock yards; packing houses; making soap, tallow, lard, grease; tanneries.

Class 44. Artificial ice, refrigerating or cold storage plants.

**Note by board.**—Excludes refrigerators of retail meat markets, etc.

Includes ice wagon drivers and helpers.

Class 45. Theater stage employés.

**Note by board.**—Excludes moving picture operators.

Class 46. Fire works manufacturing; powder works.

Class 47. Creosoting works; pile treating works.

**Note by board.**—Class 48 created August 14, 1911. Includes all funds derived from "elective non-hazardous" employments.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the payroll of each occupation if clearly separable; otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employés and the relative hazards. If an employer besides employing workmen in extra hazardous employment shall also employ workmen in employments not extra hazardous the provisions of this act shall apply only to the extra hazardous departments and employments and the workmen employed therein. In computing the payroll the entire compensation received by



every workman employed in extra hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise.

**Note by board.**—The hazard of the business or enterprise determines the application of the act rather than the degree of hazard which the individual workman is subjected to. Hazardous departments are the unit of contribution, even though embracing employes rarely in danger of injury. (Opinion Attorney-General, Sept. 8, 1911.)

Ruled outside the scope of the act: Operation and maintenance of elevators and individual steam heating plants in office buildings, hotels, apartment houses, residences, retail stores, etc. Farm hands grubbing stumps even with blasting powder as an incident to the business of farming, not within the act.

The premium of any establishment given an average rate is credited pro rata to the respective classes represented by the department payrolls.

**Sec. 5. Schedule of Awards.**—Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

**Note by board.**—Compensation is payable whenever four facts appear, namely:

(1) The business of the employer was within the scope of this act;

(2) The employé was injured;

(3) Such injury occurred out of and incidental to his employment;

(4) Such injury was not caused by wilful misconduct. It makes no difference whose fault it was or who was to blame. It is sufficient that the industry caused the injury.

The finding of the department of the non-existence of any one of the facts above enumerated would result in the denial of an

award, and in such case an appeal is allowed, as provided in section 20.

### Compensation Schedule.

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed \$75.00 in any case, and,

(1) If the workman leaves a widow or invalid widower, a monthly payment of \$20.00 shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive \$5.00 per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed \$35.00. Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz., the sum of \$240.00, but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of \$10.00 shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed \$35.00, and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent. of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed \$20.00 per month. If any dependent is under the age of sixteen years at the time of the occurrence

of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive \$20.00 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

**Note by board.**—The rule existing at the time of the passage of this act was that parents of a minor workman were not entitled to damages for his death, even though actually dependent, recovery being limited to the loss of his services during minority. The above provision is the exclusive compensation to be allowed for the death of an unmarried minor workman. (Opinion Attorney General, Jan. 9, 1912.)

The reserve to be set apart under this provision is the present value of the series of monthly payments to be made. *Ibid.*

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the age of sixteen years, paid to the child increased 100 per cent., but the total to all children shall not exceed the sum of thirty-five dollars per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of \$20.00.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of \$25.00. If the husband is not an invalid, the monthly amount of \$25.00 shall be reduced to \$15.00.

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars.

(c) If the injured workman die during the period of total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be without father or mother, such child shall receive ten dollars per month until arriving at the age of sixteen years. The total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars. Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply so long as the total disability shall continue, increased 50 per cent. for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent. of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning

power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

**Note by board.—Maximum Monthly Awards Under Sec. 5, Paragraph (d).**

---

Injured Worker	No Child	1 Child	2 Children	3 or more Children
Having able-bodied husband.....	\$22 50	\$30 00	\$37 50	\$45 00
Unmarried .....	30 00	-----	-----	-----
Having wife or invalid husband....	37 50	45 00	52 50	52 50
Widow or widower.....	30 00	37 50	45 00	52 50

---

To establish a valid claim under this section, the injured workman need not be so helpless as to require the assistance of a nurse, but there must be professional certification of his being entirely incapable of doing any gainful work, for a period of time resulting in a loss of not less than 5 per cent. of his monthly wage.

Awards under this paragraph for a temporary period, paid monthly or otherwise, not to be deducted from awards for dismemberment or "permanent partial disability" provided in subdivision (f). (Opinion Attorney-General, Dec. 12, 1911.)

The award of 50 per cent. increase over the rates scheduled in subdivision (b) may be paid monthly or at the termination of the disability. Ibid.

**The Opinion of Attorney-General:** A stevedore who was totally temporarily disabled for a period of seventeen days and was divorced three years ago but had evidently paid \$200 alimony during that time. Held that the workman was unmarried at the time of his injury, and consequently that his compensation can not be increased by reason of a legal obligation to contribute to the support of his former wife.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the state treasurer, and

he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of twenty dollars, to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars, but the total in no case to exceed the sum of four thousand dollars. The state treasurer shall invest said sum at interest in the class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the accident fund. The state treasurer shall keep accurate account of all such segregations of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

**Note by board.**—"The industries of today shall provide for the accidents of today." The reserve to guarantee the continuance of the pensions provided, "set apart for a beneficiary over thirty years of age should be the proportionate part of \$4,000, determined by the relation of the expectancy of the life of the beneficiary to the expectancy of one thirty years of age." (Opinion Attorney-General, Jan. 9, 1912.)

To the reserve of a widow is added a reserve for children under 16, but not to exceed \$4,000 set apart "for the case." Ibid.

Expectancy of life: Age 30, 35.33 years; 40, 28.18 years; 50, 20.91 years; 60, 14.10 years; 70, 8.48 years.

See Insurance Code, Sec. 92, Chap. 49, Laws 1911.

Payment of warrants by employer, see Sec. 26.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in sur-

gery to be permanent partial disability. For any permanent partial disability resulting from an injury, the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of \$1,500. The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent. of the amount awarded the minor workman.

**Note by board.**—Award hereunder dependent upon surgical discharge and proofs when the extent of the injury is determinate. See Subd. (d). A lump sum will not be paid where total disability is probable, but monthly allowances under (d).

Awards made under this section are according to a surgical scale of relative impairment of earning capacity. Previous wages or specialized value of lost members can not be considered. While the workman may not get full "compensation," he will always get some compensation, without expense to him and at a time when he most needs it.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensations shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own mo-

tion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

**Note by board.**—Payments provided in subdivisions (b) and (d) modified when the above family condition exists.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed \$4,000.00) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of \$20.00 to a person thirty years of age is worth \$4,000.00, or, with the consent of the beneficiary, for a smaller sum.

**Note by board.**—See Sec. 7, note.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

Sec. 6. Intentional Injuries—Status of Minors.—If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any



excess of damage over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be deemed *sui juris* for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

**Note by board.**—Where lump sums awarded amount to a sufficient fund to reasonably justify investment, a guardian to be appointed.

**Sec. 7. Conversion Into Lump Sum Payment.**—In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed \$4,000.00), on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of \$20.00 to a person thirty years of age is worth the sum of \$4,000.00, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and the beneficiary.

**Note by board.**—The power here given to the department will, as a matter of policy, be seldom exercised, as in practically all cases it is better for the beneficiaries to receive the award to which they are entitled in installments at stated intervals, rather than in a lump sum. The reasons for this are obvious.

Sec. 8. Defaulting Employers.—If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the state may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

**Note by board**—The defaulting employer can not avail himself of the "common law" defenses, which have been so effective in defeating personal injury claims heretofore, where the fact of the injury to his employé is not contested.

These defenses now abolished, commonly referred to as "contributory negligence," "assumption of risk," and "fellow servant rule," are:

1. That the employé was not, when injured, in the exercise of due care, or was guilty of contributory negligence;
2. That the injury received by the employé was one of the ordinary risks incident to the contract of employment;
3. That the injury was the result of the negligence of a fellow servant.

It will thus be seen that by the common-law rule the employé assumes all of the ordinary risks incident to his employment, and that his employer is only liable when he is guilty of negligence and the employé is wholly free from negligence and his injury was not caused by the negligence of a fellow servant.

Under this section employers who have not contributed to the state insurance fund are deprived of the common-law defenses, and it would seem that the only effective defense available in an action for damages for an alleged injury occurring to an employé in the course of his employment would be that no injury in fact had been sustained, or that the injury received was self-inflicted or that the employer was himself free from fault. The amount of the recovery should be determined by the "comparative negligence" of all parties.

The injured employé once having exercised his option, the decision is final and may not be withdrawn.

**Sec. 9. Employer's Responsibility for Safeguard.**—If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

- (a) In case the consequent payment to the work-

man out of the accident fund be a lump sum, a sum equal to 50 per cent. of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to 50 per cent. of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

**Note by board**—A boy under 14 years of age, or a girl under 16 years, may not be employed in dangerous trades without written permit from superior court. (Sec. 2447, Rem. and Bal. Code.) Children under 15 may not be so employed while school is in session. (Sec. 4715, Rem. and Bal. Code.)

See Sec. 30 herein. Sec. 2446, Rem. and Bal. Code ruled not applicable to factories.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or any one placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his fellow workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workmen, the schedule of compensation provided in section 5 shall be reduced 10 per cent. for the individual case of such workman.

**Sec. 10. Exemption of Awards.**—No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignment or charge shall be void.

**Note by board**—This section is necessary in order to protect the

injured employé and his dependents. If the claim were made assignable he could sell it for a small sum, and thus deprive his dependents of benefits to which they are entitled. The compensation also is made exempt from his debts on the same principle that wages now are made exempt. The justice and fairness of this should be conceded by all.

Sec. 11. Non-Waiver of Act by Contract.—No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.

Sec. 12. Filing Claim for Compensation.—(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

**Note by board**—The physician's report is a duty to the state; no payment is allowed therefor. Charge for professional services rendered a workman is his personal debt, unless the employer contracted to pay the same. See Sec. 24, 4, 7.

(b) Where death results from injury the parties entitled to compensation under this act, or some one in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstances warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim there-

under enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

• **Note by board**—All blanks necessary in the judgment of the department for the administration of the law are furnished free of cost to all employers and employes coming within the purview of the act.

**Sec. 13. Medical Examination.**—Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

**Note by board**—Refusal to submit to examination where a lump sum award is anticipated will be *prima facie* cause for rejection of claim which may be filed within the year.

**Sec. 14. Notice of Accident.**—Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

**Note by board**—"Every person who, after due notice, shall refuse or neglect to make or furnish any statement, report or information lawfully required of him by any public officer, or who, in

such statement, report or information shall make any wilfully untrue, misleading or exaggerated statement, or who shall wilfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties, shall be guilty of a misdemeanor." Rem. and Bal. Code, Sec. 2672; Sec. 420, Chap. 249, Laws 1909.

Sec. 15. Inspection of Employer's Books.—The books, records and payrolls of the employer pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent, or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and payrolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

**Note by board.**—Misdemeanor—Penalty, imprisonment in county jail not to exceed 90 days, or by a fine not to exceed \$250.00. Rem. and Bal. Code, Sec. 2266; Sec. 14, Chap. 249, Laws 1909.

Sec. 16. Penalty for Misrepresentation as to Payroll.—Any employer who shall misrepresent to the department the amount of payroll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the State under this section shall be enforced in a civil action in the name of the State. All sums collected under this section shall be paid into the accident fund.

Sec. 17. Public and Contract Work.—Whenever the State, county or any municipal corporation shall en-

gage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the State, county or municipality. If said work is being done by contract, the payroll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total payroll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the State for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment. The provisions of this section shall apply to all extra hazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total payroll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by State law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

**Note by board**—Payments into the Accident Fund to be made out of the treasury of the city, county, school, port or drainage district; abstract of contractors' payrolls, as well as of the direct employes in hazard, to be forwarded to the department monthly. The public corporation is entitled (if it so elect) to recoup from the contractor. Contractors in such work required to file payrolls monthly with the city, etc.

No distinction in rate or assessment can be made between contractors, or others, in public or private work. The same premium and necessity of contribution apply, determined by the payroll of



employés, hazard, accident experience of the class, and sound discretion of the department.

Contractors engaged in work for the federal government: Where the United States acquired land by purchase for its own use, this act is not applicable to such works and occupations as may be carried on within the confines of such land. (Opinion Attorney-General, Sept. 20, 1911.)

An expert rendering service at time rates is an independent contractor only where he fixes the condition of work and hazard.

Sec. 18. Interstate Commerce.—The provisions of this act shall apply to employers and workmen engaged in intrastate, state and also in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this State may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the department, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

Note by board—"The state legislature is without power to prescribe an exclusive remedy," where an injured seaman has the right of relief in admiralty. Act limited in compulsory operation "to vessels operating upon the navigable waters of the state without any navigable outlet to any other state or country." (Opinion Attorney-General, Oct. 28, 1911); Cf. *The Genesee Chief*, 12 How. 457; *West v. Martin*, 51 Wash. 85.

Loading or unloading at wharf, see *The Mary Garrett*, 63 Fed. 1011; *Herman v. Port Blakely Mill Co.*, 69 Fed. 646.

Interstate commerce, see *Southern Ry. Co. v. U. S. Sup. Ct.*, Oct. 30, 1911, 164 Fed. 347; *Zikos v. O. R. & N. Co.*, 179 Fed. 893.

Sec. 19. Elective Adoption of Act.—Any employer

and his employés engaged in works not extra hazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent. of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

**Note by board**—Elective non-hazardous industries or occupations segregated into Class 48 at rate of \$1.35 per \$100.00 of payroll. (Opinion Attorney-General, Sept. 16, 1911.)

**Sec. 20. Court Review.**—Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivisions (1) of section numbered 5) in so far as such decision rests upon questions of fact, or on the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the Commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named

an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 15 and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the Commissioners. In all court proceedings under or pursuant to this act the decision of the department shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

**Note by board**—The finding and award of the department appears to be reversible only on the three grounds: (1) That it acted without or in excess of its powers; (2) that the award was procured by fraud; (3) that the findings of fact by the department do not support the award.

**Sec. 21. Creation of Department.**—The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the commissioners shall be the decision of the department.

The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. The commission shall select one of their members as chairman. The main office of the commission shall be at the State capitol, but branch offices may be established at other places in the State. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

**Note by board**—See Sec. 15, note.

**Sec. 22. Salary of Commissioners.**—The salary of each of the Commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the Commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and such compensation as the Commission may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant.

**Sec. 23. Deputies and Assistants.**—The Commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed \$5,000.00 per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain an uniform form of payroll.

**Sec. 24. Conduct, Management and Supervision of**

Department.—The Commission shall, in accordance with the provisions of this act:

1. Establish and promulgate rules governing the administration of this act.

2. Ascertain and establish the amounts to be paid into and out of the accident fund.

**Note by board**—It is contemplated that Class Bulletins to emphasize accident prevention in various industries may be issued from time to time; and Safety Regulations promulgated after consideration in trade conventions, violation of which may automatically increase the premium rate of the offending employer.

3. Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

4. Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.

**Note by board**—There is no fund or provision for payment of charges for ambulance, physician, surgeon, hospital, nurse, medicine or surgical appliances. The "first aid" provision was stricken from the proposed act before passage by the legislature. See Appendix II.

5. Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.

6. Investigate the cause of all serious injuries and report to the Governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

7. Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premium collected from the same, and hospital charges and expenses.

8. Make annual reports to the Governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status

and the outstanding obligations of the accident fund, and the statistics aforesaid.

Sec. 25. Medical Witnesses.—Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or the progress of the same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars per day each.

Sec. 26. Disbursement of Funds.—Disbursement out of the funds shall be made only upon warrants drawn by the State Auditor upon vouchers therefor transmitted to him by the department and audited by him. The State Treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant shall have been drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The State Treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The State Treasurer shall be liable on his official bond for the safe custody of the moneys

and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for State depositories and to regulate the deposits of State moneys therein," shall be applied to said moneys and the handling thereof by the State Treasurer.

**Opinion of Attorney-General:** Where the funds of a particular class have been depleted by payment of pensions and awards, to such an extent that there remains in the fund an insufficient sum from which to make further monthly payments, that it is proper for the commission to approve vouchers for such further monthly payments, obtain warrants therefor from the state auditor, and deliver such warrants to the persons entitled; that it is entirely proper for the Industrial Commission to advise the state treasurer that the funds of the particular class are insufficient to pay the warrant.

Sec. 27. **Test of Invalidity of Act.**—If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workmen, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

Sec. 28. **Statute of Limitations Saved.**—If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any

adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of the invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: Provided, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

Sec. 29. Appropriations.—There is hereby appropriated out of the State treasury the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of \$1,500,000, or so much thereof as shall be necessary for the purposes of this act.

**Note by board**—The law requires the state to pay the entire cost of administration of the state insurance fund, leaving the whole amount paid into such fund by the employers to be devoted to the payment of awards for injuries.

The state can well afford to bear this expense, as its courts will be relieved of a large amount of work, and the burden now placed upon taxpayers by the trial of negligence cases will be minimized. The tendency of this act should be to produce good will between



employer and employé, and to lessen the cases of hardship among dependents of injured employés. In taking into consideration the state's many vital interests in the welfare of the workman and his family, the general taxpayer may well afford to bear the expense of administration.

Sec. 30. **Safeguard Regulations Preserved.**—Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extra hazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method, but sections 8, 9 and 10 of the act approved March 6, 1905, entitled "An act providing for the protection and health of employés in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled 'An act providing for the protection of employés in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

**Note by board**—The formation of corporate or voluntary associations, by members of the compulsory classes of employers, to study methods and appliances for accident prevention and to reduce the insurance cost under this act is urged and the co-operation of the Commission tendered.

Sec. 31. **Distribution of Funds in Case of Repeal.**—If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be provided by the legislature, and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Sec. 32. Saving Clause.—This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

§ 125. **Proposed amendment.**—The Washington Industrial Insurance Commission reports that the experience of the first year's operation of the act shows that there is a state-wide and insistent demand that the Washington Act be so amended by the next legislature as to provide a First Aid Fund which shall care for all injuries for a period of, say three weeks. The reason is that experience shows that the act in its present form does not give the injured workmen in the mass more than about 33 per cent. of the loss sustained. To meet this situation the commission which made the original draft of the present law recommended the following provision (which the last legislature refused to enact):

The provision for a First Aid Fund proposed by the investigating commission in its draft of the workmen's compensation act, but which provision the legislature refused to enact into law, was as follows:

"Sec. 10. **Creation of First Aid Fund.**—A fund is hereby created in the State treasury to be known as the First Aid Fund. Into it shall be paid by each employer, on or before the fifteenth day of November, 1911, and each month thereafter, the sum of four cents for each day's work or fraction thereof done by each workman for him during the preceding calendar month or part thereof. Two cents of such four cents shall be deducted by the employer from the pay of the workman.

Sec. 11. **Disbursements of First Aid Fund.**—Upon the occurrence of any injury to a workman, he shall receive from the First Aid Fund proper and necessary medical, surgical and hospital services and compensation for the period of temporary or other disability in the sum of five dollars per week, for not to exceed three weeks, payable at the end of each week. It shall be the

duty of the employer to see to it that immediate medical and surgical services are rendered, and transportation to hospital provided, and all charges therefor shall be audited and paid and be payable only by the department out of the First Aid Fund."

**§ 126. Constitutionality of the act.**—We give in full in the succeeding section the opinion of the Supreme Court of Washington, in *State v. Clausen*, 117 Pac. 1101, which sustains the constitutionality of the Washington Act against the objection that it authorized the taking of property without due process of law, that it operated as a denial of the equal protection of the laws, that it amounted to an inequality of taxation and that it denied the right of trial by jury.

The court sustained the constitutionality of the act as against the first three objections, but did not pass upon the fourth.

This opinion is of great value, both on account of the court's discussion of many important historical, sociological and economic questions in connection with the legal principles involved in the enactment of a compulsory workmen's insurance law, and because up to the time of the rendering of this decision, in September, 1911, no Supreme Court of any of the States had sustained the right of a State legislature to enact a law that would create a fund by taxing employers of specified classes and making it obligatory upon the workmen employed by the said employers to accept specified compensations for personal injuries received in the due course of their employment. For the right of an injured workman to sue his employer is almost wholly eliminated, excepting the very restricted cases retained in sections 6 and 8 of the act.

**§ 127. Opinion of the court.**—The case of *State v. Clausen*<sup>1</sup> was before the Supreme Court on the refu-

<sup>1</sup> 65 Wash. 156, 117 Pac. 1101.

sal of the State auditor to issue a warrant on the State treasurer for the payment of furniture purchased by the industrial insurance department for its office. The contention of the auditor was that the law creating the department was not constitutional, and that he had therefore no power to expend moneys of the State in its behalf. This contention the Supreme Court rejected, and after a discussion of the various points of objection raised to the law sustained it in all points. Owing to the importance of the decision, it is given in full, together with the concurring opinion of Judge Chadwick, expressing his views as to the finality of the decision under the circumstances.

Having made a statement of the conditions under which the case was before the court, and after presenting a summary of the law, Judge Fullerton, speaking for the court, said:

The foregoing summary makes clear the theory and purpose of the act. It is founded on the basic principle that certain defined industries, called in the act extra hazardous, should be made to bear the financial losses sustained by the workmen engaged therein through personal injuries, and its purpose is to furnish a remedy that will reach every injury sustained by a workman engaged in any of such industries, and make a sure and certain award therefor, bearing a just proportion to the loss sustained, regardless of the manner in which the injury was received. With the economic questions thus suggested, the auditor's learned counsel object only to the wisdom of the scheme formulated. They concede that the evil is one calling for a remedy, and direct their arguments solely against this particular act. In our discussion we shall confine ourselves to the questions thus suggested, noticing the economic questions only incidentally.

The act is challenged as unconstitutional on four distinct grounds: (1) That it violates section 3, of

article 1, of the State constitution, and the fourteenth amendment to the Constitution of the United States, which provide that no person shall be deprived of life, liberty, or property without due process of law; (2) that it violates section 12, of article 1, of the State constitution, which provides that no law shall be passed granting to any citizen, class of citizens, or corporations, other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations; and the fourteenth amendment to the Constitution of the United States, which provides for the equal protection of the laws; (3) that it violates sections 1 and 2, of article 7, of the State constitution, which provide that property shall be taxed according to its value in money and that all taxation shall be equal and uniform; and (4) that it violates section 21, of article 1, of the State constitution which provides that the right of trial by jury shall remain inviolate. But while we shall discuss the questions suggested under the several divisions as here set out, it is obvious that no very logical segregation of the argument can be thus made, as many of the reasons advanced for or against the act under one particular division are equally applicable to one or more of the others. Any different arrangement, however, seems to be at the sacrifice of clearness, and we pass therefore directly to the first objection stated.

It is with regret that we are unable to set forth at length counsel's argument on this branch of the case, as any abbreviation of it is at the expense of its cogency and force. To do so, however, would unduly lengthen this opinion. The argument is based on two fundamental ideas: The one, that the act creates a liability without fault; and the other, that it takes the property of one employer to pay the obligations of another. It must be conceded that these contentions have a basis in fact, and that they, on first impression, constitute a persuasive argument against the validity of the act.

Since there is exacted from every employer of labor engaged in one or more of the industries termed hazardous a certain fixed sum based upon his payroll, which is to be used to compensate employes working in such hazardous employments who receive personal injuries, regardless of the question whether the injury was because of the fault of the employer or of the negligence of the employé, it can be said that some part of the sum so collected will be paid out on injuries in which the employer is without fault; and, furthermore, since every such employer is liable to make the payments whether or not any of his own workmen are injured, and since an employer is liable under the common law for an injury to his own workmen only, it can also be said that by this act one employer is held liable for the obligations of another.

But these conditions do not furnish an absolute test of the validity of the act. In the statute books of the several States are many statutes held constitutional by the courts where liability is created without fault, and where the property of one person is taken to pay the obligations of another, and this where no compensation is made to the person who is thus made liable or whose property is thus taken, other than perhaps the bestowal upon him of some privilege. The test of the validity of such a law is not found in the inquiry, Does it do the objectionable things? but is found rather in the inquiry, Is there no reasonable ground to believe that the public safety, health or general welfare is promoted thereby? The legislature can not, of course, without violating this clause of the Constitution, declare a particular industry, commonly engaged in by the people, to be unlawful which, under all circumstances, must necessarily be harmless and innocent; but it can regulate and control and prohibit any industry, however innocent it may have been in its inception, whenever it becomes a menace to the employes engaged in it, the people surround-

ing it, or to any considerable number of the people at large, no matter from whatsoever cause the menace may arise. This it does under the police power: "the power inherent in every sovereignty \* \* \* the power to govern men and things."

It is unnecessary to discuss the origin, nature or extent of this power. It is sufficient to say that, by means of it, the legislature exercises a supervision over matters affecting the common weal and enforces the observance by each individual member of society of duties which he owes to others and the community at large. The possession and enjoyment of all rights are subject to this power. Under it the State may "prescribe regulations promoting the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its welfare and prosperity." In fine, when reduced to its ultimate and final analysis, the police power is the power to govern. It is not meant here to be asserted that this power is above the Constitution, or that everything done in the name of the police power is lawfully done. It is meant only to be asserted that a law which interferes with personal and property rights is valid only when it tends reasonably to correct some existing evil or promote some interest of the State, and is not in violation of any direct and positive mandate of the Constitution. The clause of the Constitution now under consideration was intended to prevent the arbitrary exercise of power, or undue, unjust, and capricious interference with personal rights; not to prevent those reasonable regulations that all must submit to as a condition of remaining a member of society. In other words, the test of a police regulation, when measured by this clause of the Constitution, is reasonableness, as contradistinguished from arbitrary or capricious action.

The authorities, as we view them, abundantly support the foregoing principles. Of statutes upheld by

the court which can be said to create liability without fault and take the property of one person to pay the obligations of another, the most conspicuous examples are, perhaps, sections 4585 and 4803 of the Revised Statutes of the United States, which provide:

"Sec. 4585. There shall be assessed and collected by the collector of customs at the ports of the United States, from the master or owner of every vessel of the United States arriving from a foreign port, or of every registered vessel employed in the coasting trade, and before such vessel shall be admitted to entry, the sum of forty cents per month for each and every seaman who shall have been employed on such vessel since she was last entered at any port of the United States; such sum such master or owner may collect and retain from the wages of such seamen."

"Sec. 4803. The several collectors of the customs shall respectively deposit, without abatement or reduction, the sums collected by them under the provisions of law imposing a tax upon seamen for hospital purposes, with the nearest depository of public moneys, and shall make returns of the same, with proper vouchers, monthly, to the Secretary of the Treasury, upon forms to be furnished by him. All such moneys shall be placed to the credit of 'the fund for the relief of sick and disabled seamen;' of which fund separate accounts shall be kept in the Treasury. Such fund is appropriated for the expenses of the Marine-Hospital Service, and shall be employed, under the direction of the Secretary of the Treasury, for the care and relief of sick and disabled seamen employed in registered, enrolled, and licensed vessels of the United States."

This statute clearly does everything that is charged against the statute at bar. It creates liability without fault, since it obligates the master or owner of every vessel of the United States to pay into a given fund, controlled by the Government, a fixed sum for the



benefit of sick and disabled seamen, regardless of the fact whether or not the vessel of the master or owner making the payment has any sick or disabled seamen who take advantage of the fund; and it takes the property of one to pay the obligations of another, since the fund is disbursed in the cure of sick and disabled American seamen generally, regardless of the fact whether or not the expense of their cure exceeds the sum paid in by the master or owner of the vessel from which they came. Whatever may be said as to the foundation of the liability of the master or the owner of a vessel, or the vessel itself, to answer for the expenses of the cure of sick and disabled seamen while in service on the ship, the foundation of this liability is purely statutory; and, if the objection that is made to the present statute were sufficient to condemn it, the statute is in violation of the fifth amendment to the Constitution of the United States. The statute had its inception in the act of Congress of July 16, 1798 (1 Stats. at Large, 606), and was on the statute books for nearly 100 years, during which time it was continuously enforced. It is true our attention has been called to no case where the statute was directly attacked; but there are numerous cases in which it has been specifically mentioned and given force, and it would seem that, if it were thought inimical to the Constitution, it would not have escaped the attention of the astute counsel whose client's interests were adversely affected by it. (*Buckley v. Brown*, Fed. Case, No. 2092; *Reed v. Canfield*, Fed. Case, No. 11641; *Peterson v. The Chandos*, 4 Fed. 645; *Holt v. Cummings*, 102 Pa. St. 212, 48 Am. Rep. 199. See, also, 3 Opinions of Attorneys General (U. S.) 683; 13 Opinions of Attorneys General (U. S.) 330.)

Statutes making railroad corporations absolutely liable, without regard to negligence, for injuries to property caused by fires escaping from their locomotive engines, are clearly statutes creating liability without fault,

yet these statutes have been upheld by all the courts of the States in which they have been enacted, as well as by the Supreme Court of the United States. (*Chapman v. Atlantic & St. Lawrence R. Co.*, 37 Me. 92; *Sherman v. Maine Cent. R. Co.*, 86 Me. 422, 30 Atl. 69; *Hooksett v. Concord R.*, 38 N. H. 242; *Smith v. Boston & Maine R.*, 63 N. H. 25; *Lyman v. Boston & Worcester R. Corp.*, 4 Cush. 288; *Pierce v. Worcester & Nashua R. Co.*, 105 Mass. 199; *Rodemacher v. Milwaukee & St. P. R. Co.*, 41 Iowa 297, 20 Am. Rep. 592; *Mathews v. St. Louis & San Francisco R. Co.*, 121 Mo. 298, 24 S. W. 591, 25 L. R. A. 161; *Emerson v. Gardiner*, 8 Kans. 452; *Jensen v. South Dakota Cent. R. Co.*, 25 S. Dak. 506, 127 N. W. 650; *St. Louis & San Francisco R. Co. v. Mathews*, 165 U. S. 1; *Atchison, T. & S. F. R. Co. v. Mathews*, 174 U. S. 96.)

Other statutes are those providing that any landlord who knowingly leases his premises for saloon purposes shall be liable for losses resulting from intoxication caused by the sale of liquor by his lessee. Such a statute was formerly in force in this State, and was given effect by this court. (*Delfel v. Hanson*, 2 Wash. 194, 26 Pac. 220; *Burkman v. Jamieson*, 25 Wash. 606, 66 Pac. 48.) And in *Bertholf v. O'Reilly*, 74 N. Y. 509, 30 Am. Rep. 323, the constitutionality of a like statute was maintained in an opinion by Judge Andrews, renowned for his ability and learning. In the course of his opinion the learned judge noted the fact that the liability of the landlord could not be sustained on the theory that such liability was a condition of a privilege granted by the statute, but rested the decision on the principle that the State, under its police power, could impose upon the landlord liability for the acts of his tenants. In the course of the opinion this language was used:

"And the act of 1873 is not invalid because it creates a right of action and imposes a liability not known to the common law. There is not such limit to legislative

power. The legislature may alter or repeal the common law. It may create new offenses, enlarge the scope of civil remedies, and fasten responsibility for injuries upon persons against whom the common law gives no remedy. We do not mean that the legislature may impose upon one man liability for an injury suffered by another, with which he had no connection. But it may change the rule of the common law, which looks only to the proximate cause of the mischief, in attaching legal responsibility, and allow a recovery to be had against those whose acts contributed, although remotely, to produce it. \* \* \*

“The liability imposed upon the landlord for the acts of the tenant is not a new principle in legislation. His liability only arises when he has consented that the premises may be used as a place for the sale of liquors. He selects the tenant, and he may, without violating any constitutional provision, be made responsible for the tenant’s acts, connected with the use of the leased property.”

Statutes imposing a liability upon fire insurance agents, based upon the amount of the insurance effected by them, for the benefit of a fund to care for and cure sick and injured firemen, have been upheld in the States of New York and Illinois. (*Fire Department v. Noble*, 3 E. D. Smith (N. Y.) 440; *Fire Department v. Wright*, 3 E. D. Smith (N. Y.) 453; *Exempt Fireman’s Fund v. Roome*, 29 Hun 391, 394; *Firemens Benevolent Ass’n v. Lounsbury*, 21 Ill. 511, 74 Ann. Dec. 115.) Clearly these are statutes creating liability without fault. A similar statute relating to agents of foreign fire insurance companies was upheld in Wisconsin. (*Fire Department v. Helfenstein*, 16 Wis. 136.)

The statute of Nebraska makes a railroad company liable in damages for injuries sustained by a passenger regardless of the question of negligence on the part of the company, except where the injury is caused by the

passenger's criminal negligence, or by his violation of some express rule of the company, actually brought to his attention. This statute was upheld against a challenge on the ground that it violated the due process of law clauses of the State and Federal constitutions, by the State court, in Chicago, R. I., etc., *R. Co. v. Zerneck*, 59 Nebr. 689, 82 N. W. 26, 55 L. R. A. 610, and by the Supreme Court of the United States in Chicago, R. I., etc., *R. Co. v. Zerneck*, 183 U. S. 582. The Supreme Court of the United States, vindicating the statute against the attack made upon it, used the following language:

"In *Omaha & R. V. R. Co. v. Chollette*, 33 Nebr. 143, the words of the statute exempting railroad companies from liability, 'where the injury done 'arose from the criminal negligence of the persons injured,' were defined to mean 'gross negligence,' 'such negligence as would amount to a flagrant and reckless disregard' by the passenger of his own safety, and amount to a 'willful indifference to the injury liable to follow.' This definition was approved in subsequent cases. It was also approved in the case at bar, and the plaintiff in error, it was in effect declared, was precluded from any defense but that of negligence as defined, or that the injury resulted from the violation of some rule of the company by the passenger brought to his actual notice, and the company, as we have said, was not permitted to introduce evidence that the derailment of its train was caused by the felonious act of a third person. The statute, thus interpreted and enforced, it is asserted, impairs the constitutional rights of plaintiff in error. The specific contention is that the company is deprived of its defense, and not only declared guilty of negligence and wrongdoing without a hearing, but, adjudged to suffer without wrongdoing, indeed even for the crimes of others, which the company could not have foreseen or have prevented.

"Thus described, the statute seems objectionable.

Regarded as extending the rule of liability for injury to persons which the common law makes for the loss of or injury to things, the statute seems defensible. And it was upon this ground that the Supreme Court of the State defended and vindicated the statute. The court said:

“The legislation is justifiable under the police power of the State, so it has been held. It was enacted to make railroad companies insurers of the safe transportation of their passengers as they were of baggage and freight; and no good reason is suggested why a railroad company should be released from liability for injuries received by a passenger while being transported over its line, while the corporation must respond for any damages to his baggage or freight.’

“Our jurisprudence affords examples of legal liability without fault, and the deprivation of property without fault being attributable to its owner. The law of deodands was such an example. The personification of the ship in admiralty law is another. Other examples are afforded in the liability of the husband for the torts of the wife—the liability of a master for the acts of his servants.

“In *Missouri Railway Co. v. Mackey*, 127 U. S. 205, a statute of Kansas abrogating the common law rule exempting a master from liability to a servant for the negligence of a fellow-servant, was sustained against the contention that such statute violated the fourteenth amendment of the Constitution of the United States. And in *Minneapolis, etc., Railway Co. v. Herrick*, 127 U. S. 210, a statute of Iowa which extended liability for the ‘willful wrongs, whether of commission or omission,’ of the ‘agents, engineers or other employés’ of railroad companies, was vindicated against the double attack of being an unjust discrimination against railroad corporations and the deprivation of property without due process of law.”

The latest illustration of such a statute is found in the

Oklahoma depositors guaranty law, which authorizes the assessment and collection of a certain per centum on the daily average deposit of each and every bank organized under the laws of the State as a fund to pay the losses caused depositors by failing and insolvent banks. This act was challenged in the State court on the ground that it violated the fourteenth amendment to the Constitution of the United States, and the due process of law clause of the State constitution; but was upheld by the State court, and on writ of error to the Supreme Court of the United States, the judgment of the State court was affirmed. (*Noble State Bank v. Haskell*, 22 Okl. 48, 97 Pac. 590; *Noble State Bank v. Haskell*, 219 U. S. 104.) Answering the objection that the act takes private property for a private use, and creates a liability without fault, the Supreme Court of the United States said:

“The substance of the plaintiff’s argument is that the assessment takes private property for private use without compensation. And while we should assume that the plaintiff would retain a reversionary interest in its contribution to the fund so as to be entitled to a return of what remained of it if the purpose were given up (see *Receiver of Danby Bank v. State Treasurer*, 39 Vt. 92, 98), still there is no denying that by this law a portion of its property might be taken without return to pay debts of a failing rival in business. Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. (*Clark v. Nash*, 198 U. S. 361; *Strickley v. Highland Boy Mining Co.*, 200 U. S. 527, 361; *Offield v. New York, New Haven & Hartford R. R. Co.*, 203 U. S. 372; *Bacon v. Walker*, 204 U. S. 311, 315.) And in the next, it would seem that

there may be other cases besides the every day one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. (See *Ohio Oil Co. v. Indiana*, 177 U. S. 190.) At least, if we have a case within the reasonable exercise of the police power as above explained, no more need be said."

Illustrations of the nature and all-pervading extent of the police power are shown somewhat in the cases already cited. Other illustrations abound almost without number in the decisions of the State and Federal courts. It will be sufficient for our purposes, however, to call attention to a few of those which most clearly, as we believe, illustrate the doctrine. In *Lawton v. Steele*, 152 U. S. 133, the court used this language:

"The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the State may order the destruction of a house falling to decay or otherwise endangering the lives of passersby; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of

gambling houses and places where intoxicating liquors are sold. Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests."

Again, in *Holden v. Hardy*, 169 U. S. 366, it was said:

"An examination of both these classes of cases under the fourteenth amendment will demonstrate that, in passing upon the validity of State legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the States methods of procedure, which at the time the constitution was adopted were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. Even before the adoption of the constitution, much had been done toward mitigating the severity of the common law, particularly in the administration of its criminal branch. The number of capital crimes, in this country at least, had been largely decreased. Trial by ordeal and by battle had never existed here, and had fallen into disuse in England. The earlier practice of the common law, which denied the benefit of witnesses to a person accused of felony, had been abolished by statute, though so far as it deprived him of the assistance of counsel and compulsory process for the attendance of his witnesses, it had not been changed in England. But to the credit of



her American colonies, let it be said that so oppressive a doctrine had never obtained a foothold there.

“The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the States homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the States grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority. This case does not call for an expression of opinion as to wisdom of these changes, or their validity under the fourteenth amendment, although the substitution of prosecution by information in lieu of indictment was recognized as valid in *Hurtado v. California*, 110 U. S. 516. They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent in-

flexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land."

So, in *Noble State Bank v. Haskell*, *supra*, Mr. Justice Holmes said:

"It may be said in a general way that the police power extends to all the great public needs. (*Canfield v. United States*, 167 U. S. 518.) It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If then the legislature of the State thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it. Even the primary object of the required assessment is not a private benefit as it was in the cases above cited of a ditch for irrigation or a railway to a mine, but it is to make the currency of checks secure, and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand. The priority of claim given to depositors is incidental to the same object and is justified in the same way. The power to restrict liberty by fixing a minimum of capital required of those who would engage in banking is not denied. The power to restrict investments to securities regarded as relatively safe seems equally plain. It has been held, we do not doubt rightly, that

inspections may be required and the cost thrown on the bank. (See *Charlotte, Columbia & Augusta R. R. Co. v. Gibbes*, 142 U. S. 386.) The power to compel, beforehand, co-operation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end. (*Gundling v. Chicago*, 177 U. S. 183, 188.) So far is that from being the case that the device is a familiar one. It was adopted by some States the better part of a century ago, and seems never to have been questioned until now. (*Receiver of Danby Bank v. State Treasurer*, 39 Vt. 92; *People v. Walker*, 17 N. Y. 502.) Recent cases going not less far are *Lemieux v. Young*, 211 U. S. 489, 496; *Kidd, Dater and Price Co. v. Musselman Grocer Co.*, 217 U. S. 461.

“It is asked whether the State could require all corporations or all grocers to help to guarantee each other’s solvency, and where we are going to draw the line. But the last is a futile question, and we will answer the others when they arise. With regard to the police power, as elsewhere in the law, lines are pricked out by the gradual approach and contact of decisions on the opposing sides. (*Hudson County Water Co. v. McCarter*, 209 U. S. 349, 355.) It will serve as a datum on this side, that in our opinion the statute before us is well within the State’s constitutional power, while the use of the public credit on a large scale to help individuals in business has been held to be beyond the line. (*Loan Association v. Topeka*, 20 Wall. 655; *Lowell v. Boston*, 111 Mass. 454.)”

It is argued, however, that the statutes above referred to can be supported on principles not applicable to the statute before us. First, it is said that the statutes creating absolute liability on railroad companies for losses caused by fires from their locomotive engines are in themselves but a return to the common law as it

originally existed. But this does not meet the objection. At the time the common law became a rule of action for the American States, the doctrine that negligence or fault of some kind was a necessary element of liability was as firmly embedded in it as was any other of its tenets, and to create liability regardless of negligence is now as fundamental a change in the common law as it would be had the rule always remained as it now is. Again, it is said that the right to use the agencies of fire and steam in the movement of trains is derived from legislation by the State, and the State can, for that reason, prescribe such limitations upon, and annex such conditions to, its use as it may deem fit and necessary to protect from injury those who come in contact with it. But the premise here assumed is not strictly accurate. The use of fire and steam to propel trains is not in itself unlawful. On the contrary, it is as much a natural right as is the right to propel them by any other means or to engage in any other lawful enterprise. Hence, the power to regulate and interfere with the right must come from some source other than the inherent unlawfulness of the act itself. It is not meant to be said, of course, that the State, when it grants a charter to a railroad company empowering it to construct and operate a railroad within its boundaries, may not annex to the charter such conditions as it pleases. But that is not the question here. The question is, whence comes the power to impose these additional burdens upon a railroad corporation by legislative fiat after it has received its charter and has constructed and is operating its road thereunder? Unless the constitution or the act granting the charter itself expressly reserves such right, the legislature can not materially change the charters of railroad companies after it has once granted them. The power to annex additional conditions thereto must therefore be found in some other power than the one here alluded to. Then, again, it is said with refer-

ence to these and the bank guaranty statutes, that the corporations named therein are affected with a public interest, and that this fact renders them subject to regulations that they would not otherwise be subject to. But again, we say that the legislature, because of this public interest, may be warranted in imposing such a condition as a precedent right to engage in the business of railroading or banking, but it furnishes no reason for imposing additional conditions after the business has been entered upon with the consent of the State. The property of such institutions is private property, and its ownership is as secure and free from arbitrary exactions as is the property invested in enterprises of a more private nature. Of the statutes making the landlord liable for damages caused by the sale of intoxicating liquors by his tenant, it is said that the traffic is unlawful in itself; that "whisky is an outlaw," and hence the legislature, if it permits its sale at all, may prescribe the terms upon which sales shall be made. But here again the assumption is not in accord with the fact. The sale of liquor was not unlawful at common law. On the contrary it has been said by as high an authority as the Supreme Court of the United States that the State could no more exclude "its importation and sale in original packages without the consent of Congress than it could exclude the sugar of Louisiana, the cotton of South Carolina, the wines of California, the hops of Washington, the tobacco of Maryland and Connecticut, or the products natural or manufactured of any State." (*Lyng v. Michigan*, 135 U. S. 161.) It refused to classify intoxicating liquors with rags or other goods infected with disease, or with cattle or meat or other provisions which from their condition are unfit for human use or consumption; as it was conceded that the State could prohibit the importation and use of these in any form, with or without the consent of Congress. It seems to us, therefore, that it can not be successfully controverted

that all of these statutes rest upon the same basic principle on which the statute at bar rests; that is to say, they have their foundation in the police power of the State.

Nor is it sufficient to exclude the industries mentioned in the act before us from the operation of these principles to say that they are lawful callings, not subject to absolute prohibition. As we have said in another place, lawful trades and businesses, although private in their nature, are subject to the police power, and may be controlled and regulated under it whenever the welfare of the State requires it. This is well illustrated by the laws of our own State. For example, the statute requiring employers of labor to pay their employes in lawful money; the statute requiring employers of female help in stores or offices to provide each of them with a chair or stool on which to rest when their duties permit; the statute prohibiting the employment of females in any mechanical or mercantile establishment, laundry, hotel or restaurant, for more than 10 hours in any one day; the statute limiting the number of hours an employé will be permitted in any one day to work underground in a coal mine; the statute requiring machinery in factories, mills and workshop, the openings of all hoistways, hatchways, elevators and well holes, to be guarded; the statute appointing a commissioner of labor, and empowering him to inspect mills and factories and charge the cost thereof to the mill or factory inspected, are all statutes regulating lawful trades or businesses not affected with public interests; yet each and all of them have been upheld and enforced in a long line of cases by this court. (*State v. Buchanan*, 29 Wash. 602, 70 Pac. 52, 92 Am. St. 930, 59 L. R. A. 342; *Kirkham v. Wheeler-Osgood Co.*, 39 Wash. 415, 81 Pac. 869; *Shortall v. Puget Sound Bridge & Dredging Co.*, 45 Wash. 290, 88 Pac. 212; *Hall v. West & Slade Mill Co.*,

39 Wash. 447, 81 Pac. 915; *Whelan v. Washington Lumber Co.*, 41 Wash. 153, 83 Pac. 98, 111 Am. St. 1006.)

The Supreme Court of the United States in *Sentell v. New Orleans, etc., R. Co.*, 166 U. S. 698, speaking of the power of the State to interfere with private property, used this language:

“That a State, in a bona fide exercise of its police power, may interfere with private property, and even order its destruction, is as well settled as any legislative power can be, which has for its objects the welfare and comfort of the citizen. For instance, meats, fruits and vegetables do not cease to become private property by their decay; but it is clearly within the power of the State to order their destruction in times of epidemic, or whenever they are so exposed as to be deleterious to the public health. There is also property in rags and clothing; but that does not stand in the way of their destruction in case they become infected and dangerous to the public health. No property is more sacred than one’s home, and yet a house may be pulled down or blown up by the public authorities, if necessary to avert or stay a general conflagration, and that, too, without recourse against such authorities for the trespass.”

The power to regulate, therefore, applies alike to all employments. The test of the power is found in the effect the pursuit of the calling has upon the public weal, rather than in the inherent nature of the calling itself.

In *Allgeyer v. Louisiana*, 165 U. S. 578, the court, referring to the fourteenth amendment to the Constitution of the United States, said:

“The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to

pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

It is thought the act at bar interferes with certain of the personal rights here defined, particularly with the right of contract, and is for that reason violative of this provision of the Constitution. But it is recognized in the case cited, and in many others, that these rights are not absolute. On the contrary, it has been many times said that there is no absolute right to do as one wills, pursue any calling one desires, or contract as one chooses; that the term liberty means absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. The principle was thus stated in *Frisbie v. United States*, 157 U. S. 160:

"A second objection, insisted upon now as it was by demurrer to the indictment, is that the act under which the indictment was found is unconstitutional, because interfering with the price of labor and the freedom of contract. This objection also is untenable. While it may be conceded that, generally speaking, among the inalienable rights of the citizens is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessities of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking,



every citizen has a right freely to contract for the price of his labor, services, or property.”

Again, in the case of *Holden v. Hardy*, 169 U. S. 366, the court, holding constitutional the statute of the State of Utah fixing the number of hours a workingman should be permitted to work continuously in underground mines, used this language:

“This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of employes as to demand special precautions for their well-being and protection, or the safety of adjacent property. While this court has held, notably in the cases *Davidson v. New Orleans*, 96 U. S. 97, and *Yick Wo v. Hopkins*, 118 U. S. 356, that the police power can not be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety or morals, or the abatement of public nuisances, and a large discretion ‘is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.’ ”

So, in *State v. Buchanan*, *supra*, this court, holding constitutional the act limiting the number of hours women could be required to work in one day in mechanical and mercantile establishments, said:

“Law is, or ought to be, a progressive science. While the principles of justice are immutable, changing conditions of society and the evolution of employment make a change in the application of principles absolutely necessary to an intelligent administration of government. In the early history of the law, when employments were

few and simple, the relative conditions of the citizen and the state were different, and many employments and uses which were then considered inalienable rights have since, from the very necessity of changed conditions, been subjected to legislative control, restriction, and restraint. This all flows from the old announcement made by Blackstone that when man enters into society, as a compensation for the protection which society gives to him, he must yield up some of his natural rights, and, as the responsibilities of the government increase, and a greater degree of protection is afforded to the citizen, the recompense is the yielding of more individual rights. Transportation companies are now controlled and restricted, where a few years ago they claimed the right to transact their business exactly as it suited their private interests. The practice of medicine is restricted and controlled; laws against quackery and empiricism are enforced without question. The sale of liquor, which formerly was a legitimate business, and which the citizen had a right to enter into, as he did any other business, without any restrictions, has now become subject to the control of the state, or to actual prohibition at the will of the state. The changing conditions of society have made an imperative call upon the state for the exercise of these additional powers, and the welfare of society demands that the state should assume these powers, and it is the duty of the court to sustain them whenever it is found that they are based upon the idea of the promotion and protection of society."

If, therefore, the act in controversy has a reasonable relation to the protection of the public health, morals, safety or welfare, it is not to be set aside because it may incidentally deprive some person of his property without fault or take the property of one person to pay the obligations of another. To be fatally defective in these respects, the regulation must be so utterly unreasonable

and so extravagant in nature and purpose as to capriciously interfere with and destroy private rights.

That the statute here in question has the attribute of reasonableness, rather than that of capriciousness, seems incontrovertible. The evil it seeks to remedy is one that calls loudly for action. Accidents to workmen engaged in the industries enumerated in it are all but inevitable. It seems that no matter how carefully laws for the prevention of accident in such industries may be framed, or how rigidly they may be enforced, there is an element of human equation that enters into the problem which can not be eliminated and which invariably causes personal injuries and consequent financial losses to workmen engaged therein. Heretofore these losses have been borne by the injured workmen themselves, by their dependents, or by the State at large. It was the belief of the legislature that they should be borne by the industries causing them, or, perhaps more accurately, by the consumers of the products of such industries. That the principle thus sought to be put into effect is economically, sociologically, and morally sound, we think must be conceded. It is so treated by the learned counsel who have filed briefs in support of the auditor's contentions; it is so conceded by all modern statesmen, jurists, and economic writers who have voiced their opinion on the subject; and the principle has been enacted into law by nearly all of the civilized countries of Europe, by Australia, by New Zealand, by the Transvaal, by the principal Provinces of the Dominion of Canada, and in a partial form at least by one or more of South American Republics. Indeed, so universal is the sentiment that to assert to the contrary is to turn the face against the enlightened opinion of mankind. The common law does not purport to afford a remedy for the condition here found to exist. It affords relief to an injured workman in only a limited number of cases; cases where the injury is the result of fault on the part of the employer

•

and there is want of fault on the part of the workman. For the greater number of injuries traceable to the dangers incident to industry, no remedy at all is afforded. The act, therefore, having in its support these economic and moral considerations, is not unconstitutional for the reasons suggested upon this branch of the argument.

Passing to the second objection, it is well settled that neither the clause of the State constitution prohibiting class legislation, nor the clause of the fourteenth amendment to the Constitution of the United States relating to the equal protection of the laws, takes from the State the power to classify in the adoption of police regulations. The limitations imposed admit of a wide discretion in this respect, and avoid only what is done without any reasonable basis; that is, such regulations as are in their nature arbitrary. The learned counsel for the auditor recognize this distinction, and consequently do not attack the act because it is confined to extra hazardous occupations as its field of regulation, but complain because its benefits are not confined to workmen injured while engaged in such occupations. It is claimed that the act allows workmen employed in such industries the benefit of the act when injured outside of the line of their duties, or when engaged in the business of the concern in a capacity not affected by the peculiar hazards of the business. We have quoted enough of the statute to show that it is somewhat obscure in these respects, but we are not inclined to think the point fatal to the act, even though we concede counsel's interpretation of it to be the correct one. In section 27, the legislature has made it clear that it did not intend the provisions relating to those who are entitled to partake of its benefits to be so far an integral part of the act that it could not be eliminated in part without destroying the act in its entirety. It is there expressly provided that the adjudication of invalidity of any part of the act shall not affect the validity of the act as a

•

whole or any other part thereof. This means that the legislature intended the act to be enforced as far as it may be, even though it might not be valid in its entirety. It was competent for the legislature so to provide. Anything it could have eliminated itself and left an operative act, can be eliminated by the courts without destroying the entire act, if it is the will of the legislature that the remaining parts of the act shall stand after such elimination. So here, if it be true that the legislature has gone too far in this direction, and has attempted to include within its benefits certain employés who can not be included without including employés generally, these can be omitted in the administration of the act without the necessity of nullifying the entire act. But whether any such workmen are so improperly included, we shall not here determine. The question can best be met when it arises during the course of the act's administration.

Again, it is said that the act violates the provisions relating to class legislation because it diverts the contributions exacted from the numerous industries to the relief of a particular class of injured and disabled workmen, instead of applying it to the relief of injured workmen generally or applying it to the use of the State at large. But to divert the money collected in this manner to a special use is one of the prerogatives of legislation. The right of the State to regulate any form of industry arises from the fact that its pursuit affects injuriously the health, safety, morals, or welfare of the persons engaged in it, or is inimical in some form to some portion of the individuals of the community. It is not necessary that it always affect injuriously the public at large. On the contrary, it may be regulated if it affects injuriously those engaged in it, or those brought in direct contact with it, even though its pursuit may benefit generally the people of the State at large. Nor is there any particular form which the regulation must take. The conduct of the business may be prohibited

entirely in a particular place or in a particular manner; its pursuit may be restricted to certain hours of the day; it may be permitted to be conducted only in case protective devices are used; or it may be permitted in certain forms and a sum of money exacted from the individuals carrying it on for the purpose of recompensing those who suffer losses because thereof.

So in this instance, if the legislature believed that to permit the pursuit of the industries named after the present manner of conducting them was generally for the public good in spite of the losses the method of pursuit entailed, there is no reason why it should not confine its regulations to compelling the owners and conductors of such industries to create a fund out of which the losses caused thereby should be made good. That legislation in this form is not class legislation, nor a denial to owners of property of the equal protection of the laws is well sustained by authority.

In *Jensen v. South Dakota Cent. R. Co.*, *supra*, the court, discussing the question, used this language:

"The exercise of the police power in this class of cases is based upon the ground that, where persons are engaged in a calling or business attended with danger to other persons and their property, then the legislature may step in and impose conditions upon the exercise of such calling or business for the general good and welfare of society, and may prescribe the terms on which such dangerous calling or business will be permitted to be carried on by persons in charge thereof, whether such persons happen to be private individuals or railway corporations. The fact that such legislative exercise of the police power applies alike to all persons and all corporations engaging in such dangerous calling or business relieves it from the charge and contention that there is a denial of equal protection under the law by reason of such enactments."

In *Firemen's Benevolent Ass'n v. Lounsbury*, *supra*,

the court had under consideration a statute of the State of Illinois which created a corporation called the Firemen's Benevolent Association, and required every insurance agent in the city of Chicago to pay to the association a fixed percentage upon the amount of fire insurance premiums collected by him per year from fire insurance effected upon property in the city, to be used solely for the relief of distressed, sick, injured, or disabled firemen and their immediate families. Answering the objection that the act was void as class legislation, the court said:

"There is nothing to be found in the constitution which can be held to inhibit the legislature from imposing burthens, or raising money from citizens of the State, which is not for the direct benefit of the State, and is never designed to belong to the State. To deprive the legislature of this power, would to a great extent destroy its usefulness—while it would to a certain extent, deprive it of the power of abuse, it would destroy its power to regulate by law a thousand things, which the public good requires should be regulated by law.

\* \* \* Let us once hold that the legislature could not compel any citizen to submit to a burthen, except for the benefit of the State aggregate, or for some subdivision of it, as a county, city or town, or to pay any money except it shall go into the State or some subordinate public treasury, and we should soon find ourselves on the brink of anarchy itself—we should tie up the hands of the legislature it is true, so that they might not do some evils which they have hitherto had the power of doing; but we should also let loose upon society ten thousand evils, which in every well-regulated community it has always been the duty of the legislature to suppress. It is in the exercise of this indispensable power, that ferries, toll bridges and the like are licensed or chartered. The legislature, finding it necessary to afford especial encouragement to private enterprise to erect a

bridge or a ferry, has ever exercised the power of imposing a burthen on some, for the benefit of others. Who ever doubted the right of the legislature to charter a bridge and to require all persons crossing the stream within certain limits, to pay the tolls, whether they cross on the bridge or not? It is the exercise of the same power, which fixes the fees of officers for the performance of certain services. It is the power which the legislature possesses, of imposing burthens upon certain members of the community who are supposed to be benefited, by the efforts or acts of certain other members of the community, as a reward or compensation for such acts. \* \* \* It would fill a volume to enumerate all the familiar instances of the exercise of this power—a power which must be exercised constantly in every civilized community, or the well being of that community must vitally suffer.”

In *State v. Cassidy*, 22 Minn. 312, 21 Am. Rep. 765, the court sustained an act which required the vendors of intoxicating liquors to pay a fixed sum per annum into the State treasury, in addition to the usual license fee, as a fund to be disbursed by a State commission in the creation and operation of a State asylum for the care and cure of inebriates. The court in its opinion points out that the act is an exercise of police power, saying:

“It regards the traffic as one tending to produce intemperance, and as likely, by reason thereof, to entail upon the State the expense and burthen of providing for a class of persons rendered incapable of self-support, the evil influence of whose presence and example upon society is necessarily injurious to the public welfare and prosperity, and, therefore, calls for such legislative interposition as will operate as a restraint upon the business, and protect the community from the mischiefs, evils and pecuniary burthens flowing from its prosecution. \* \* \* That these provisions unmistakably partake of the na-



ture of police regulations, and are strictly of that character, there can be no doubt, nor can it be denied that their expediency or necessity is solely a legislative, and not a judicial, question. \* \* \*

“Regarding the law as a precautionary measure, intended to operate as a wholesome restraint upon the traffic, and as a protection to society against its consequent evils, the exacted fee is not unreasonable in amount, and the purpose to which it is devoted is strictly pertinent and appropriate. It could not be questioned but that a reasonable sum imposed in the way of an indemnity to the State against the expense of maintaining a police force to supervise the conduct of those engaged in the business, and to guard against the disorders and infractions of law occasioned by its prosecution, would be a legitimate exercise of the police power, and not open to the objection that it was a tax for the purpose of revenue, and, therefore, unconstitutional. Reclaiming the inebriate, restoring him to society, prepared again to discharge the duties of citizenship, equally promotes the public welfare, and tends to the accomplishment of like beneficial results, and it is difficult to see wherein the imposition of a reasonable license fee would be any the less a proper exercise of this power in the one case than in the other. The purpose to which the license fund created by the act is designated is more consonant to the idea of regulating the traffic and preventing its evils than is the case under the general license law, which devotes the fees received to common-school purposes, and we are not aware that any objection has ever been urged against that law on that account.”

A statute of Kentucky imposed upon all dogs a tax at a fixed sum per capita, to be paid by their owners, for the creation of a fund to be disbursed to sheep growers whose sheep should be injured or destroyed by the ravages of dogs. In *McGlone v. Womack*, 129 Ky. 274, 111 S. W. 688, 17 L. R. A. (N. S.) 855, this statute was chal-

lenged by a number of owners of dogs on the ground that it violated the State constitution. Answering the objection that it was class legislation, the court said:

"Nor do we think the act is inimical to that portion of section 3 of the bill of rights which provides: '\* \* \* And no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services. \* \* \*' As we view it, the statute does not confer any special privilege on the owner of sheep. It merely protects these owners from the destruction of their property by dogs. It is the duty of the State to protect every citizen in his life, liberty, and property; and it certainly is within the competency of the legislature to exercise the police power of the State to protect all property against the ravages of destructive animals. The question as to how this is to be done and what property is to be so protected is a matter of legislative discretion. Undoubtedly the sheep industry is a most important one to the whole State. All of our citizens are interested in an industry which supplies the market with wholesome meat, provides means of obtaining warm and comfortable clothing, and at the same time furnishes labor to the otherwise unemployed. It is only necessary to allude to this phase of the question. The importance of the industry as a whole is most obvious. It is equally obvious that sheep are peculiarly liable to the ravages of dogs. They have neither the fleetness to escape nor the courage to defend themselves from attack, and their silent suffering enables the dog to prey upon them without any danger that the owner will be warned of the destruction of his property by the outcry of the dying animal. \* \* \*

The fact that sheep are generally killed at night when it is impossible to ascertain the owner of the dog committing the ravage makes it necessary, if protection is to be had through this channel at all, that each owner of a dog should be required to contribute a small amount to

a common fund dedicated to the remuneration of owners of sheep killed by unknown dogs. As said before, this is simply requiring the owners of dogs to make good the ravages of dangerous animals kept by them; and no citizen has just cause of complaint, if he keeps animals destructive to the property of others, that he is required to make good the damages done by them. The statute in truth, is but an enforcement of the maximum, '*sic utere tuo ut alienum non laedas*,' and, as such, its constitutionality is beyond successful question."

(See, also, *Leavitt v. City of Morris*, 105 Minn. 170, 117 N. W. 393, 17 L. R. A. (N. S.) 984; *Mitchell v. Williams*, 27 Ind. 62; *Van Horn v. People*, 46 Mich. 183, 9 N. W. 246, 41 Am. Rep. 159; *Cole v. Hall*, 103 Ill. 30; *Longyear v. Buck*, 83 Mich. 236, 47 N. W. 234, 10 L. R. A. 43; *Holst v. Roe*, 39 Ohio St. 340, 48 Am. Rep. 459; *State v. Frame*, 39 Ohio St. 399.)

The foregoing cases, while defending the statute here in question against the charge of class legislation, are interesting from another aspect also. They furnish examples of constitutional statutes creating liability without fault. To effect insurance as an agent, to sell intoxicating liquors where not forbidden by the State, or to own and keep dogs, is not of itself unlawful; and it would seem that any reason which would justify the levying of a tax on persons pursuing these occupations as business callings, or owning and keeping the species of property mentioned, would justify the levy sought to be made by the act before us.

The third principal objection to the constitutionality of the act is that it violates the provisions of the constitution designed to secure equal and uniform taxation of property for public purposes. As the charge laid on the persons engaged in the industries named in the act is a pecuniary burden imposed by public authority, it partakes of the nature of a tax, and in the language of a distinguished judge discussing a similar question, "for

many purposes might be so spoken of without harm." But it is manifest that it is not a tax in the sense the word is used in the sections of the constitution to which reference is here made. No accession to the public revenue, general or local, is authorized or aimed at. The purpose of the exaction is entirely different. It is to be used, not to meet the current expenses of government, but to recompense employes of the industries on whom the burden is imposed for injuries received by them while engaged in the pursuit of their employment. It is the consideration which the owners of the industries pay for the privilege of carrying them on. It is, therefore, in the nature of a license tax, and can be justified on the principle of law that justifies the imposition and collection of license taxes generally. In this State, such taxes may be imposed, either as a regulation or for the purposes of revenue, the only limitation upon the power being that such taxes when imposed on useful trades and industries shall not be unreasonable, and if a class of trades or industries is selected from the whole, and the tax imposed upon the class selected alone rather than upon the whole, that there be some reasonable ground for making the distinction. (*Walla Walla v. Ferdon*, 21 Wash. 308, 57 Pac. 796; *Fleetwood v. Read*, 21 Wash. 547, 58 Pac. 665, 47 L. R. A. 205; *Stull v. DeMattos*, 23 Wash. 71; 62 Pac. 451, 51 L. R. A. 892; *Seattle v. Barto*, 31 Wash. 141, 71 Pac. 735; *In re Garfinkle*, 37 Wash. 650, 80 Pac. 188; *Oilure Mfg. Co. v. Pidduck-Ross Co.*, 38 Wash. 137, 80 Pac. 276; *McKnight v. Hodge*, 55 Wash. 289, 104 Pac. 504.)

The general rule governing the right to impose such license taxes is well stated by Judge Brewer in *City of Newton v. Atchison*, 31 Kan. 151, 1 Pac. 288, 47 Am. Rep. 486, in the following language:

"Before noticing some specific objections which are made to this particular tax, we think it proper to state

certain general propositions which underlie this matter of a license tax.

“First. In the absence of any inhibition, express or implied, in the constitution, the legislature has power, either directly to levy and collect license taxes on any business or occupation, or to delegate like authority to a municipal corporation. This seems to be the concurrent voice of all the authorities. In 1 Dillon on Municipal Corporations, 3d ed., sec. 357, note, the author says: ‘Unless specially restrained by the constitution, the legislature may provide for the taxing of any occupation or trade, and may confer this power upon municipal corporations.’ In Burroughs on Taxation, page 148, is this language: ‘Where the constitution is silent on the subject, the right of the State to exact from its citizens a tax regulated by the avocations they pursue, can not be questioned.’ In *Savings Society v. Coite*, 6 Wall. 606, the Supreme Court of the United States, thus states the law: ‘Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a State for the support of the State government.’ (*Hamilton Co. v. Massachusetts*, 6 Wall. 638; *Cooley on Taxation*, 384 to 392, 410.) On page 384 the author observes, ‘The same is true of occupations; government may tax one, or it may tax all. There is no restriction upon its power in this regard unless one is expressly imposed by the constitution.’

“In *State Tax on Foreign-held Bonds*, 15 Wall. 300, Field, J., among other things, speaking of the power of taxation, says:

“‘It may touch property in every shape, in its natural condition, in its manufactured form and in its various transmutations. And the amount of taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch busi-

ness in the almost infinite forms in which it is conducted; in professions, in commerce, in manufactures, and in transportation. Unless restrained by the constitution, the power as the mode, form and extent of taxation is unlimited.'

"(See also the authorities collected in *Fretwell v. City of Troy*, 18 Kas. 274.) Nor does this rest alone upon a mere matter of authority. Full legislative power is, save as specially restricted by the constitution, vested in the legislature. Taxation is a legislative power. Full discretion and control therefore in reference to it are vested in the legislature, save when specially restricted. There is no inherent vice in the taxation of avocations. On the contrary, business is as legitimate an object of the taxing power as property. Oftentimes a tax on the former results in a more even and exact justice than one on the latter. Indeed, the taxing power is not limited to either property or avocation. It may, as was in fact done during the late war and the years immediately succeeding, be cast upon incomes, or placed upon deeds and other instruments. We know there is quite a prejudice against occupation taxes. It is thought to be really double taxation. Judge Dillon well says that 'such taxes are apt to be inequitable, and the principle not free from danger of great abuse.' Yet, wisely imposed, they will go far toward equalizing public burdens. A lawyer and a merchant may, out of their respective avocations, obtain the same income. Each receives the same protection and enjoys the same benefits of society and government. Yet the one having tangible property pays taxes; the other, whose property is all in legal learning and skill, wholly intangible, pays nothing. A wisely-adjusted occupation tax equalizes these inequalities. But after all, these are questions of policy, and for legislative consideration. It is enough for the courts that both occupation and property are legitimate objects of taxation; that they are essentially dissimilar; that con-

stitutional provisions regulating the taxation of one do not control that of the other; and that there are no constitutional inhibitions on the taxation of business, either by the legislature directly, or by the municipal corporations thereto empowered by the legislature.

“Second. There is no inhibition, expressed or implied, in our constitution, on the power of the legislature to levy and collect license taxes, or to delegate like power to municipal corporations. It is not pretended that there is any express inhibition. It has been contended that section 1, article 11, creates an implied inhibition, and this because it reads that ‘the legislature shall provide for a uniform and equal rate of assessment and taxation.’ But that section obviously refers to property, and not to license taxes.”

In *Fleetwood v. Read*, *supra*, this court, discussing the question whether taxation of this sort was prohibited by the constitution, said:

“It is insisted, also that the ordinance is void because it imposes a burden upon a portion, and not the whole, of a class of merchants. We do not think this contention is tenable. The ordinance does apply to all merchants who see fit to engage in the business of buying tickets of that kind, and the constitutional provision (art. 1, sec. 12) that no law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations, can not be invoked against this ordinance. The adjudicated cases in this respect are so numerous that it is scarcely worth while to mention them here.

“The ordinance can not be held void on account of excessive burden imposed. It is not so oppressive that it will in any way interfere with the rights of merchants. However wrong the policy may be which prompted the enactment of this ordinance, or however doubtful the propriety of passing such an ordinance, those are ques-

tions which are submitted by the legislature to the discretion of the council, and upon them it is not our province to comment. We think without further investigation, that there is no doubt that the ordinance is warranted by legislative authority.

"Some question was raised by the court at the time of the argument of this case in relation to the ordinance being in conflict with secs. 1, 2 and 9 of art. 7 of the State constitution, which provide for uniformity in taxation. Counsel for the respondent was requested by the court to furnish it with a brief on that subject, which he did, and upon an examination of the cases cited and of other cases, we have become convinced that the question raised by the court was not a question pertinent in this case; that, under the great weight of authority, a tax on occupation, business, etc., is not, in legal contemplation, a tax on property, which falls within the inhibition imposed by the usual constitutional provisions in relation to uniformity of taxation; and, in consideration of the fact that the State constitution is a limitation upon the actions and powers of the legislature instead of a grant of power, that the power of the legislature to tax trades, professions and occupations is, in the absence of constitutional restriction, a matter within its absolute control and resting entirely in sound legislative discretion."

The sums exacted from the several industries named we think may be treated as partaking both of the nature of a license for revenue and regulation; as such, however, we find nothing in the principle inimical to either the State or Federal constitutions.

The fourth principal reason for which the act is thought to be unconstitutional is that it interferes with the right of trial by jury. It is said that the legislature can not fix a Procrustean rule for the admeasurement of damages arising from injuries received by one in the employment of another, as the employer and the employé alike have the right to submit to a jury both the



question of the right to recover for any such injury, and the question of the amount that may be recovered therefor. But we can not think the rule absolute. It may be that the legislature can not fix the amount of recovery, or provide for an absolute recovery, in all cases where one person is injured by another, regardless of the relation of the parties, or the question whether the injury is or is not the result of negligence; but it does not follow that it may not so provide where the injury happens in that class of employments subject to legislative regulation and control. If it be, as we have attempted to show, a proper regulation of hazardous industries to compel those engaged therein as owners or operators to pay a fixed sum into a fund to be used for the purpose of compensating the employés thereof for injuries received by them, it is difficult to understand why it is not also proper regulation to require the employés of such industries to accept a given sum for any injury that they may receive while so engaged. The same power that authorizes the State to regulate the participation of the one in the particular industry would seem to authorize it to regulate the participation of the other therein. Theoretically, of course, the employer and employé, on entering into a contract by which the one engages the services of the other, stand on the same plane; but in practice, as it is well known, this ideal condition very seldom exists. Greed and sagacity on the one side, and necessity and incapacity on the other, some time lead to contracts that create conditions little short of peonage; and our own reports abound with instances where men have been induced to work in situations so dangerous to life and limb that the wonder is not that some of them were injured, but rather, that any of them escaped injury. Indeed, it is a common thing for an employer, in defense of an action of damages brought by his employé for injury received in such a situation, to urge that the dangers of the place were so

obvious and apparent that the employé was guilty of contributory negligence for working therein. These conditions, we think, authorize the interference of the legislature. The grounds upon which the employer may be held to contribute to a fund for the relief of all injuries sustained by his employés whatever the cause, we have already stated. The obligation of the employé to accept the conditions of the statute can rest on like grounds: namely, the welfare of the State. The relation being one of contract between employer and employé, the State may make it a condition of the contract that the employé shall accept a fixed sum for any injury he may receive while engaged in the employment, whether the injury be the result of the inherent dangers of the employment or the result of some fault of his employer.

There is, of course, no direct authority supporting the contention that the right of trial by jury may be thus taken away. There are, however, cases maintaining principles more or less analogous to the principle thus involved. Of these *State v. Buchanan*, and *Holden v. Hardy*, *supra*, are illustrative. In these cases it is held that the legislature may limit the number of hours a workman shall be permitted to labor in certain classes of employments, on the principle that to do so is to protect the health of the individual workman and thus contribute to the public welfare. If it be within the rule of the police powers of the State to interfere with the workman's personal freedom in this regard, it would seem to be no greater stretch of power to go one step farther and provide that if he be injured while so laboring, he shall receive a sure award in a limited sum as compensation for his injury, and in lieu thereof shall forego his common law action in damages therefor.

The common-law system of making awards for personal injuries has no such inherent merit as to make a change undesirable. While courts have often said that

the question of the amount of compensation to be awarded for a personal injury is one peculiarly within the province of the jury to determine, the remark has been induced rather because no better method for solving the problem is afforded by that system than because of the belief that no better method could be devised. No one knows better than judges of courts of nisi prius and of review that the common-law method of making such awards, even in those instances to which it is applicable, proves in practice most unsatisfactory. All judges have been witnesses to extravagant awards made for most trivial injuries, and trivial awards made for injuries ruinous in their nature; and perhaps no verdicts of juries are interfered with so often by the courts as verdicts making awards in such cases. There is no standard of measurement that the court can submit to the jury by which they can determine the amount of the award. The test of reasonableness means but little to the ordinary juror. Unused as he is generally to witnessing the results of injuries, he is inclined to measure his verdict by the amount of disorder he observes, rather than by the actual amount of disablement the injury has caused. Nor is he aided in this respect by the testimony of medical experts. Conflicting as such testimony usually is, it tends rather to confuse than to enlighten him. Perhaps the whole difficulty lies in the fact that the question is too much one of opinion, and not enough of fact. It must be remembered, also, that the remedy afforded by the common law, as we have elsewhere remarked, can be applied only in a limited number of cases of injury; cases where the injury is the result of negligence on the part of the employer, not contributed to by the employé. For the greater number of injuries the common law affords no remedy at all. For this unscientific system, it is proposed to substitute a system which will make an award in all cases of injury, regardless of the cause or manner of its in-

fiction; limited in amount, it is true, but commensurate in some degree to the disability suffered. The desirability of this substitution is unquestioned, and we believe that the legislature had the power to make it without violating any principle of the fundamental law.

The objection may be answered also in another way. The constitution does not undertake to define what shall constitute a cause of action, nor to prohibit the legislature from so doing. The right of trial by jury accorded by the constitution, as applicable to civil cases, is incident only to causes of action recognized by law. The act here in question takes away the cause of action, on the one hand, and the ground of defense, on the other; and merges both in a statutory indemnity, fixed and certain. If the power to do away with a cause of action in any case exists at all, in the exercise of the police power of the State, then the right of trial by jury is thereafter no longer involved in such cases. The right of jury trial being incidental to the right of action, to destroy the one is to leave the other nothing upon which to operate.

The auditor also complains of the scheme adopted by the legislature for correcting the evil they have found to exist. It is said that the scheme is unduly cumbersome; that its administration will prove unnecessarily costly and burdensome to those whose interests are affected by it, and will lead to public and private abuses and consequent evils more dangerous to the State than the evil that it is sought to correct. But the courts are slow to inquire into the mere wisdom of a statute. This question is so pre-eminently one for the law-making branch of the Government that the courts will interfere only where there can be no two opinions as to the mischievous and evil tendencies of the act. The act in question here was framed by a commission composed of men eminent for their ability, who gave to the work extended consideration. It was selected by the legis-

lature from among a number of proposed acts having a similar purpose submitted for their examination; and this, too, after its evil tendencies had been fully pointed out by the representatives of the different interests to be affected by it. In the light of these facts, the court can not do otherwise than put it to the test of practice. Moreover, the question becomes one of less importance when it is remembered that the sessions of the legislature are sufficiently close together to enable that body to correct any evil influence the enforcement of the act may have before it becomes unduly harmful.

In the foregoing discussion we have not referred to the decision of the Court of Appeals of the State of New York in the case of *Ives v. South Buffalo R. Co.*, 201 N. Y. 271, 94 N. E. 431 [Bulletin No. 92, p. 251], which holds the workingmen's compensation act of that State to be in conflict with the due process of law clause of the State constitution, and the fourteenth amendment to the Constitution of the United States. The case has, however, been the subject of extended consideration in the briefs of counsel, and it is urged upon us by counsel for the auditor as conclusive of the questions at bar. The act the court there had in review is dissimilar in many respects to the act before us, and is perhaps less easily defended on economic grounds. The principle embodied in the statutes is, however, the same; and it must be conceded that the case is direct authority against the position we have here taken. We shall offer no criticism of the opinion. We will only say that, notwithstanding the decision comes from the highest court of the first State of the Union, and is supported by a most persuasive argument, we have not been able to yield our consent to the views there taken.

We conclude, therefore, that the act in question violates no provision of either the State or Federal constitutions, and that the auditor should give it effect. Let the writ issue.

Dunbar, C. J., Crow, Morris, Ellis, Mount, Parker, and Gose, J. J., concur.

Chadwick, J. (concurring).—This proceeding is prosecuted by the relator, a simple contract creditor of the State. There is no party in interest before us whose interest it is to challenge the act of the legislature. This is a moot case, pure and simple, and the right of the relator to recover is in no way affected by the constitutional questions raised by the parties and discussed by the court. The legislature having created the industrial insurance commission, its power to organize can not be questioned by any one who is not affected by the terms of the law, and such expenses as it may incur are proper charges against the State and may be collected without reference to the power of the commission to levy a tribute upon certain kinds of business, or to make disbursement of the funds under the provisions of the act.

Without questioning or discussing the conclusions of the court upon the first three propositions advanced, with all of which I agree, the fourth proposition should not now be decided for the very palpable reason that our decision is binding upon no one, not even upon the court. No one will contend that it is of any concern to a furniture dealer who is seeking to collect his account whether an injured workman is to be deprived of the right to submit his cause to a jury of his peers. The principle is too important to be mooted by the court, for some day a real party in interest will be before us—either an employer who feels aggrieved at the operation of the law, or a workman who has received injuries which the accepted schedules will not compensate; and we will be put to the duty of deciding the case without reference to our present decision, so that the Federal questions involved may pass for final hearing to the Supreme Court of the United States.

The right to recover damages for personal injuries suffered in consequence of the negligence of another

was an admitted right at common law, so that the question whether the seventh amendment to the Constitution of the United States, which preserves the right of trial by jury in all cases maintainable at common law which are begun in the courts of the United States, would not compel a Federal court to ignore our statute, could be compelled to contribute to the indemnity fund and the consequent question, whether a party assessed unless he is to be protected from all suits of like character, becomes most material, and it is to be hoped that we will have an early opportunity to meet these issues in a proper case.

That the people of the State of Washington can take away a right of action, or abolish the right of trial by jury, I have no doubt, but whether the legislature can do so without the warrant of the whole people expressed by way of amendment or repeal of sections 3 and 21 of article 1 of the State constitution, is a grave question which is not discussed in the opinion of the court. The right of trial by jury has ever been regarded as the very sinew of liberty. It was the cardinal principle of the great charter, and "It is worthy of note that all that is extant of the legislation of the Plymouth Colony for the first five years, consists of the single regulation 'that all criminal facts, and also all manner of trespasses and debts between man and man, shall be tried by the verdict of twelve honest men, to be impaneled by authority, in form of a jury upon their oath.' (1 Palfrey's New England, 340." Cooley's Const. Limitations (6th ed.), p. 389, n.)

The right is asserted in every State constitution. Sec. 21, *supra*, provides that "the right of trial by jury shall remain inviolate." No distinction is made between civil and criminal cases; indeed the additional text would indicate that no distinction was intended. This guarantee has been held by this court to apply to all civil law actions maintainable at common law. (State

ex rel. Mullen v. Doherty, 16 Wash. 382, 47 Pac. 958, 58 Am. St. 39.) I am a firm believer in trial by jury and am of equal faith that the will of the people as declared in their written constitution is binding upon legislatures as well as courts, until the people by like adoption express a contrary will. We should not decide otherwise except at the suit of a proper party.

The present law seems to be greatly to the advantage of the employer for whom an easy method of discharging an obligation to his injured employé is provided, but whether the legislature can take from the workingman his right to have the amount of his compensation fixed by an authority less than the very people, who have said "the right of trial by jury shall remain inviolate," is for future hearing.

I have not advanced these observations in the way of objections, for the result of the court's opinion is a consummation for which I have devoutly hoped; but to indicate merely that our decision upon the fourth proposition—the right of trial by jury—is not settled by this decision and should not be so regarded, and further, in the event that it be finally held that a jury trial can not be dispensed with, under our present constitution, that the objection may be easily overcome without doing violence to the purpose or principle of the act, and without amendment to the constitution, by providing that, in the event of a dispute as to the amount of compensation, a jury shall be called to try that issue and that its verdict shall be conclusive.

Upon the fourth proposition, therefore, I reserve my opinion until such time as its expression will have the force of law.

There being no question that the relator has a right to recover the amount due on its account, it follows that the writ should issue.



**§ 128. Rules and directions.**—Sections 21 to 26 of the Washington Act provide for the creation of the Washington State Industrial Insurance Department and appointment of Commissioners to administer the same, and authorizes the Commissioners to prescribe appropriate rules and directions for the proper administration of the law, both respecting the employers and employes covered by the same. These rules and directions are set forth in full in the following sections:

**§ 129. Rules and direction for employers.**—

1. Whenever any accident occurs to any workman (in your plant or establishment) it shall be the duty of the employer to at once report such accident to the Commission, for which use Industrial Insurance Blank Form (k), § 143. Blank reports for such purpose may be secured by applying for same to the Commission or at one of the branch offices herinafter mentioned. These reports must be filled out accurately, immediately and in detail as required by section 14 of the law.

2. Where an injured workman files a claim for compensation, it shall be the duty of the physician and also of the employer to inform and advise the injured workman (or his relatives or dependents in case of death) of his rights under the Compensation Law and to lend all necessary assistance in aiding the workman in making his claim and such proof as the Commission may require. Such assistance is to be "without charge to the workman" as required and provided in section 12 of the law. Blanks for filing claims for compensation (Form (1), § 144) will be sent to the different employers, and if not, may be secured by writing the Commission, or at any branch office of the Commission. Each employer should have these and other blanks on hand at all times so that prompt reports may be made to the Commission of all accidents.

3. Each employer should assist his injured em-

ployés in securing their rights under the law. The entire matter is between the employer, employé and the State. In assisting your injured workmen and doing all that you can for their benefit or relief, you in no way injure or prejudice yourself. Such assistance will tend to produce more cordial relations between employer and workmen and greatly expedite and facilitate the operation and administration of the Compensation Law. In all matters of doubt or dispute address the Commission direct. No claim for compensation is valid unless filed within one year after date of injury and all workmen should be so advised.

4. Section 11 of the law specifically provides that no employer or workman shall exempt himself from the burden or waive the benefits of the law by any contract, rule or regulation, and any such contract, rule or regulation shall be void.

5. Employers should inform and advise their injured workmen that section 10 of the law provides that no money paid or payable under the Compensation Law shall, prior to issuance and delivery of the warrant, be assigned, charged, or even be taken in execution or attached and garnished. Any such assignment or charge shall be void.

6. Section 9 of the law relating to "Employer's responsibility for safeguards" and inflicting heavy penalties in case of injury due to the absence of safeguard, should be closely observed. All statutory safeguards should be maintained and the departmental rulings of the State Labor Commission and of this Commission carefully observed. Otherwise serious penalties may be imposed in case of accident. If any workman remove any such safeguard this Commission should be advised.

7. Section 8 of the law relating to employers who fail or refuse to make their payments into the "accident fund" should be carefully observed. Default in the pay-

ment of any premium means great risk and peril on the part of the defaulting employer.

8. Employers should notify this Commission of any work or establishment, which because of poor, careless or negligent management, is unduly dangerous and hazardous in comparison with other like or similar works or establishments. This notice is necessary in order to protect the careful employer.

9. The attention of employers is directed to section 16 of the law which imposes an extremely heavy penalty for misrepresenting to the Commission the amount of the payroll upon which the employer's premium under the law is based. The employer who so misrepresents is liable to the State ten (10) times the amount of the difference in premium paid and the amount the employer should have paid. The traveling auditors of the Commission will at all times assist the employers in computing their premiums under the law. If any employer in your line of business or class misrepresents his payroll you should so advise the Commission. Such misrepresentation means loss to you eventually and not to the State, as thereby your particular class fund is diminished.

10. Section 19 of the Act provides that any employer and his workmen engaged in works not extra hazardous (such as clerical help, etc., etc.), may jointly elect to accept the provisions of the act, and if so, are then entirely within the terms of the law. The rate of premium on such non-hazardous employment is 1.35 per cent. of the payroll, to be paid quarterly, and thereafter monthly as required. Blanks for elective adoption covering non-hazardous work may be secured by addressing the Commission or at any branch office of the Commission, requesting Blank Form (e), § 137. Whenever the workman may be subjected to danger or hazard it is highly desirable that both he and the em-

ployer come under the Compensation Act, thus affording mutual protection.

11. The Compensation Act in no way interferes with any of the usual hospital arrangements between employers and employes. Whenever possible it is desirable that such arrangements be continued in order that injured workmen may receive immediate hospital and medical attention.

12. The employment of competent foremen and superintendents and the exercise of care in the management of all establishments within the scope of the law is necessary in order to reduce accidents to a minimum. The employer's contributions to the "accident fund" created by the Compensation Law will depend entirely upon the number of accidents to workmen.

13. When any new industry is started or any suspended business resumes operation the Commission should be advised so that payrolls can be secured and the new or revised industry subjected to the requirements of the Compensation Law.

14. Employers desiring copies of the Workmen's Compensation Act may secure the same by applying to the Commission. Any other data with reference to the law, its administration or operation, may be secured from the Commission.

15. Branch offices of the Commission are located at 524 Haight Building, Seattle, No. 1009 South "A" Street, Tacoma, and 410 Fernwell Building, Spokane. Blanks, copies of the law, data, information, etc., can be secured at any time at these offices.

16. All statutes relating to safeguards and protection of machinery and all departmental rulings or regulations with reference thereto should be carefully complied with and observed. If accidents are reduced to a minimum, then necessarily the enforced contributions of employers under the Compensation Law will be reduced accordingly. One of the chief purposes of the

law is to reduce and minimize accidents and conserve human life and limb. Employés as well as employers should constantly bear this fact in mind.

17. Section 15 of the law provides that "the books, records and payrolls of the employer pertinent to the administration of the Act shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the men employed and such other information as may be necessary for the department and its management under this Act." Refusal to permit such inspection is made a crime.

18. The Commission will be in session on Monday of each week, at which time objections, criticisms, suggestions, protests, etc., etc., will be heard and considered. Employers and employés having matters to present to the Commission may do so at such meetings.

### § 130. Rules and directions for workmen.—

1. Any injured workman entitled to compensation under the law must file at once with the Commission his claim for compensation on Form (1), § 144. These claim blanks can be secured by writing direct to the Commission or by applying at either of the following offices: 524 Haight Building, Seattle; No. 1009 South "A" Street, Tacoma; 410 Fernwell Building, Spokane. Claims for compensation must be filled out carefully and accurately.

2. The injured workman must also file at once with the department the certificate or report of the physician who attended him. This report is Form (m), § 146, of Commission, and may be secured by workmen or physicians at either of the above offices.

3. Section 12 of the law requires the attending physician to assist the injured workman in making application for compensation.

4. In case of death the relatives or dependents of

the deceased workman must file claim for compensation upon blank forms to be furnished by the Commission.

5. No claim for compensation will be considered and no compensation awarded unless all necessary blanks furnished and required by the Commission are filled out accurately, carefully and completely to the satisfaction of the Commission.

6. No claim for compensation by any injured workmen will be considered unless filed within one year after date of injury. (Section 12).

7. Whenever requested by the Commission any injured workman shall submit to a medical examination by one of the Commission's examining physicians. In case of refusal to submit to such examination all compensation will be suspended and nothing further will be done in the consideration of the claim for compensation, until the necessary and required official examination occurs.

8. In case of removal of any safeguard or protective device on machinery by the superintendent, foreman or any other person, the Commission should be immediately notified. If any injury results to any workman because of the removal of any safeguard by himself, then in such case the workman's compensation is reduced ten per cent.

9. In case of injury the workman should consult the employer or address this department at once for blank forms upon which to make claim for compensation. Litigation under the law is unnecessary and would be useless.

10. Whenever necessary the Commission reserves the right to supervise the medical, surgical and hospital treatment of the injured workman. (Section 24).

11. All workmen should assist each other and their employers in the earnest attempt to avoid accidents. Fewer accidents mean less pain, happier homes and greater prosperity.

### § 131. Form of general directions to employés to be posted on all floors of plant.

Workmen's Compensation Act of Washington requires every employer to post conspicuously on each floor of his plant, factory or place of business:

"On and after October 1st, 1911, all workmen employed on or about power driven machinery or in any dangerous work are entitled to receive compensation, if injured, according to the law.

#### WHAT TO DO IF INJURED.

"1. Make out a claim AT ONCE or have some one do it for you.

"Use blank (1) which you can get from your employer, or from the Industrial Insurance Commission in Olympia, or from any of its branch offices as follows:

"Seattle, 524 Haight Building.

"Tacoma, 506 Bank of California Building.

"Spokane, 410 Fernwell Building.

"Fill out and sign claim and send back to main office in Olympia.

"2. Get the doctor who attends you to make out a report and send it in. This blank report can be secured from any of the above offices. You may call any doctor you like. Section 12 of the law requires the attending physician to help you in making out these blanks.

"3. If possible, get a report of witnesses who saw the accident—Form (o). This blank can be secured at above offices and may save trouble later.

"4. In case of death, relatives or dependents must make the claim and blanks will be furnished them when requested.

"5. Fill out the blanks fully and carefully. Action upon your claim will be delayed unless reports are made out promptly and correctly.

"6. Make out your claim AT ONCE. Prompt action will assist you in getting early compensation.

"7. Don't hire a lawyer. Ask the assistance of your employer and the commission first. If you come under the law and get hurt while doing your work, you will get your money without a lawsuit.

#### GENERAL DIRECTIONS.

"Don't take off any safeguard or protective device. If you do, and then get hurt, it decreases or lessens your compensation 10 per cent. (See Sec. 9 of the law.)

"If the superintendent, foreman or any other person removes a safeguard, report the fact to the Commission. Don't remove it yourself and don't let anyone else remove it.

"Don't take any chances with machinery. If you injure yourself intentionally you are not entitled to any compensation.

"If required, you must allow the Commission's physician to

examine you, but this examination will not cost you any money. It is paid for by the State. Don't refuse to be examined or your claim will not be considered.

"Keep blanks on hand or ask your employer to keep them on hand for you. They don't cost him anything, and the sooner you make a proper claim, the sooner it will be settled.

"Don't hesitate to lend a hand when anyone is hurt. It is to your interest and to your employer's interest to decrease or lessen the number of accidents and deaths and keep as many workmen at work as possible.

"The state will try and give you reasonable compensation in case of injury. If you do not think it is sufficient, remember that it is much better than lawsuits and delays under the old system.

INDUSTRIAL INSURANCE COMMISSION,

GEO. A. LEE.

Of Washington.

C. A. PRATT,

J. H. WALLACE,

Commissioners.

**§ 132. Formal procedure—List of forms.**—The Industrial Insurance Commission of Washington, responding to the duties imposed upon it by the Washington Insurance Act, has, as a part of the scheme of administration devised by it, prescribed twenty-one forms which are required to be used by the employers and injured employes covered by the said act, together with certain instructions and charts which are designated as follows:

- (a) Report of actual payroll (by employer);
- (b) Contractors' statement of wages (by employer);
- (c) Monthly statement of city of ..... of county of ..... (by employer);
- (d) Notice of assessment (to employer);
- (e) Elective adoption of the provisions of the Industrial Insurance Act (by employer);
- (f) Demand for quarterly payment required by the Workmen's Compensation Act of the State of Washington (to employer);
- (g) Monthly statement (by employers);
- (h) Alphabetical list of industries with corresponding rates and classification (to employer);



- (i) Instructions to cities, counties, school, port, water-way, drainage, or other municipal corporation;
- (j) Letter of instruction to employers and employes;
- (k) Employer's report of accident to employé with chart;
- (l) Workmen's claim for compensation with instructions to injured workmen;
- (m) Report of attending physician with charts;
- (n) Surgical discharge report;
- (o) Report of witnesses with instructions;
- (p) Surgeon's special report with charts;
- (q) Proof of death to be filled out by attending physician of deceased;
- (r) Proof of death from undertaker;
- (s) Dependent's claim for compensation;
- (t) Affidavit of claimant for compensation by survivors of deceased workmen;
- (u) Summary and award;
- (v) Partial payment voucher, permanent partial disability—Full payment, total temporary disability—Partial payments;
- (vv) Form of partial payment voucher—Total temporary disability—Monthly allowance.
- (w) Form of pension voucher—Permanent total disability.
- (ww) Form of pension voucher—Survivors of deceased workman.
- (x) Form of burial expense voucher—Account of deceased workman.
- (y) Form of final settlement voucher.
- (z) Form of election to receive compensation and assignment of claim—Injuries by defaulting employer.
- (zz) Election to receive compensation and assignment of claim—Injury by other than employer.

These forms are given in full in the succeeding pages in the order named above.

§ 133. Form of report of actual payroll (a):

Firm Name		Business Address		To be used in Olympia office only.	
Firm No.		Business Address		To be used in Olympia office only.	
Rate		Class No.		Address of Plant	
Kind of Business		Address of Plant		To be used in Olympia office only.	
Date 1912	Number Employees	Payrolls Total Amount	NON-HAZARDOUS PAYROLLS	Amount Hazardous Payrolls	Class Number
			Total Non-Hazardous	Covered by Agreement at 1.35%	
Week Ending					
Week Ending					
Week Ending					

NOTE: If payrolls are made up monthly, make entry on last date shown for each month.

Payrolls audited by \_\_\_\_\_

I hereby certify that the above is a true and correct statement of payroll.

Signature \_\_\_\_\_

Traveling Auditor. \_\_\_\_\_

Official position of person signing report \_\_\_\_\_

Date of Examination		HAZARDOUS OCCUPATIONS (Nature of employment only)		NON-HAZARDOUS OCCUPATIONS (Nature of employment only)	
Number of Employees		Number of Employees		Number of Employees	



**§ 135. Form of monthly statement of city (c):**

The following report is made to the Industrial Commission of the State of Washington certifying that the following is a complete list of all the departments of the city of\_\_\_\_\_, county of\_\_\_\_\_, having employes under the scope of the Workmen's Compensation Act, together with a statement of the wages received by them for the month of\_\_\_\_\_

DEPARTMENT	Number of Employees	Total Payroll	Hazardous Payroll Under Act	CONTRIBUTION			Fund	Warrant Number
				Class	Rate	Amount		

Signature .....  
 Official Title .....

**§ 136. Form of notice of assessment (d):**

Date\_\_\_\_\_

To\_\_\_\_\_

\_\_\_\_\_

DEMAND is hereby made for contribution on your payroll as required by Section 4 of the Workmen's Compensation Act (Chapter 74, Laws 1911), at the rate therein provided, into the Accident Fund of your Class:

For the month of\_\_\_\_\_ \$\_\_\_\_\_

Less credits shown on department's records\_\_\_\_\_ \$\_\_\_\_\_

Net amount to be forwarded\_\_\_\_\_ \$\_\_\_\_\_

This sum of \$\_\_\_\_\_now demanded must be received at Olympia thirty (30) days from the date above noted; otherwise you will be in default and subject to the penalties of the Act.

Remittance may be made by check, draft, or money order, payable to "Industrial Insurance Commission," and forwarded to Olympia, Washington.

This assessment is made upon an estimated monthly payroll based on the average payroll of your establishment, determined by the actual audit for October, November and December, of firms listed in 1911. Should your payroll at this time be larger or smaller than the estimate, an adjustment will be made after December 31st, 1912, and each establishment will be charged\_\_\_\_\_%

on as many twelfths of the entire year's payroll as there have been monthly calls.

The present assessment is made on account of the funds of the Class having been depleted below the point of reasonable safety by compensation awards made employes for accidents occurring in establishments of members of this class only.

INDUSTRIAL INSURANCE COMMISSION.

Attest:

By \_\_\_\_\_

Chairman.

Chief Auditor.

"Sec. 8. Defaulting Employers.

"If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the State as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the State for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the State may be prosecuted or compromised by the department in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department."

§ 137. Form of elective adoption of the provisions of act (e):

We, \_\_\_\_\_, employer, and \_\_\_\_\_  
 \_\_\_\_\_ employes of said employer,  
 do hereby jointly and mutually agree to and do hereby elect and

accept each and all of the provisions of the Industrial Insurance Act of the State of Washington (Chapter 74, Session Laws of 1911), and do hereby subject ourselves irrevocably and completely to all of the provisions of said law, to all intents and purposes as if we had been originally included within its terms.

In Witness Whereof, We have hereunto set our hands, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

-----  
Employer.

By-----

-----  
-----  
-----

Employés of said employer.  
Witnessed by

Employés of said employer.

-----  
-----

The above election and adoption is hereby approved this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

INDUSTRIAL INSURANCE COMMISSION.

By-----

Chairman.

(ELECTIVE ADOPTION OF ACT) (Sec. 19, Chap. 74, Session Laws of 1911). "Any employer and his employés engaged in works not extra hazardous, may by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent. of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law."

### § 138. Form of demand for first quarterly payment required by act (f):

To the Industrial Insurance Commission, Dr.  
Olympia, Washington.

As required by law, demand is hereby made upon you for the payment of \$\_\_\_\_\_, the same representing your first or preliminary payment into the "Accident Fund" created by the Workmen's Compensation Law (Ch. 74, Session Laws of 1911), and is based upon data and payrolls for the months of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_, heretofore received from you by this office.

This first payment covers your \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (19\_\_\_\_) payrolls. At the end of each year an adjustment will be made upon the basis of the actual payroll for the year, and your

contributions as required by the law will be based upon your actual yearly payroll.

This first quarterly payment will be sufficient until such time as the accidents occurring in your particular class have depleted the fund to such an extent that further payments are required.

Under Section 4 of the law, the first payment, herein and hereby demanded, must be received in this office on or before-----; otherwise, you will be in default and subject to the serious perils and penalties of Section 8, of the act relating to "defaulting employers."

This notice to you is a "demand for payment" as prescribed in Section 8 of said law. No further demand will be made upon you for this first quarterly payment, and prompt attention, therefore, is extremely important.

Yours very truly,

Industrial Insurance Commission.

By-----

Chairman.

Attest:

The amount herein demanded as the first quarterly payment is the true and correct amount under the law, and has been computed on the basis of data and payrolls of the above firm, heretofore submitted and on file in this office.

-----  
Chief Auditor, Industrial Insurance Commission.

### § 139. Form of monthly statement (g):

The following report is made to the INDUSTRIAL INSURANCE COMMISSION of the State of Washington, showing names and payrolls of all contractors engaged in public work during the month of-----, for the City of-----, County of-----

CONTRACTOR'S NAME	Improvement Ordinance	Local Improve- ment District	CHARACTER OF WORK	Number of Employees	Total Hazardous Payroll	Class	Rate	Amount of Contribution	Fund	Warrant Number	REMARKS

Signed by -----

Official Title -----

§ 140. Alphabetical list of industries with rates and classification (h).—The following is an alphabetical list of the industries comprehended in the act, together with the rate of contributions that they bear, and the class in which they are placed:

	Class.	Pct.
Advertising signs -----	5	.035
Asphalt (manufacturing) -----	30	.025
Asphalt laying -----	8	.030
Automatic sprinklers (installation of) -----	6	.030
Barrel -----	29	.025
Basket -----	29	.025
Belts, putting up for machinery -----	6	.030
Blast furnaces (construction) -----	5	.040
Blast furnaces (operating) -----	18	.030
Blinds -----	29	.025
Boat building (with scaffolds) -----	9	.045
Boat rigging -----	9	.030
Boilers, covering -----	6	.030
Boilerworks -----	34	.020
Bottling works -----	37	.020
Box -----	29	.025
Brass (manufacturing) -----	34	.020
Breakwaters -----	3	.050
Breweries -----	37	.020
Brick (manufacturing) -----	35	.020
Brickettes (manufacturing) -----	36	.020
Brickwork (construction) -----	5	.050
Bridges (construction) -----	2	.065
Bridgework -----	27	.025
Brush (working in) -----	38	.015
Building hothouses -----	5	.020
Building material (not otherwise specified) -----	31	.025
Cable railways, with (rock work or blasting) -----	6	.050
Cable railways, without (rock work or blasting) -----	6	.035
Canal, other than irrigation or docks with or without blasting -----	3	.065
Canneries of fruit or vegetables -----	32	.025
Canneries of fish or meat products -----	33	.025
Carpenter work (not otherwise specified) -----	5	.035
Cement (manufacturing) -----	31	.025
Chimneys—metal, concrete or brick -----	5	.050
Cloth (working in) -----	38	.015
Coal mines -----	16	.030
Cold storage plants (refrigeration) -----	44	.020



	Class.	Pct.
Cooperage .....	29	.025
Concrete chimneys .....	5	.050
Concrete buildings .....	5	.050
Concrete laying in floors or foundations .....	5	.030
Concrete laying in street paving .....	8	.030
Condensed milk .....	40	.015
Conduits (placing wires in) .....	6	.030
Copper (manufacturing) .....	34	.020
Cordage, (manufacturing) .....	38	.015
Creameries .....	40	.015
Creosoting works .....	47	.025
Dock excavations .....	3	.065
Door .....	29	.025
Dredges (making) .....	27	.025
Dredges (operation) .....	12	.050
Drilling wells .....	1	.020
Drydocks .....	12	.050
Dynamos (installing) .....	6	.030
Earthenware (manufacturing) .....	35	.020
Electric light and power plants or systems (construction) .....	6	.050
Electric light or power plants or systems (operating) .....	13	.040
Electric railways (with rock work or blasting) .....	6	.050
Electric railways (without rock work or blasting) .....	6	.035
Electric systems (not otherwise specified) .....	13	.020
Electrical apparatus (installing systems in buildings) .....	6	.020
Elevators, freight or passenger .....	5	.050
Electrotyping .....	41	.015
Engraving .....	41	.015
Excavations not otherwise specified .....	6	.040
Excelsior (manufacturing) .....	29	.020
Ferries .....	20	.030
Fertilizer .....	25	.025
Fire alarm (installing systems in buildings) .....	6	.020
Fire clay (manufacturing) .....	35	.020
Fire escapes .....	5	.065
Fireproofing of buildings .....	5	.050
Fireproof doors or shutters (erecting) .....	5	.050
Fireworks (manufacturing) .....	46	.050
Floating docks (construction) .....	9	.045
Floating docks (operation) .....	12	.050
Flouring mills .....	21	.020
Foodstuffs (working in) .....	39	.015
Foundries .....	34	.020
Fruits (working in) .....	39	.015
Galvanized iron or tin work .....	5	.050
Garbage works .....	25	.020

	Class.	Pct.
Gas works or systems (construction) .....	6	.050
Gas works (operation) .....	19	.030
Glass beveling .....	34	.025
Glass manufacturing .....	31	.020
Glass setting .....	5	.020
Grain elevators (not metal framed) .....	2	.050
Grain elevators (operation) .....	21	.020
Grease making .....	43	.015
Hardware .....	34	.020
House heating systems .....	6	.020
House moving .....	4	.065
House wrecking .....	4	.065
Ice, artificial .....	44	.020
Installations of steam boilers or engines .....	6	.030
Iron (manufacturing) .....	34	.020
Iron or steel frame structures or parts of structures .....	5	.080
Jetties .....	3	.050
Jewelry (making) .....	41	.015
Keg (manufacturing) .....	29	.025
Lath mills .....	10	.025
Lathing .....	5	.020
Lard (making) .....	43	.015
Laundries .....	22	.020
Lead articles (manufacturing) .....	34	.020
Leather (working in) .....	38	.015
Lithographing .....	41	.015
Locomotive making or repairing .....	28	.025
Logging .....	10	.025
Logging railroads .....	7	.050
Longshoring .....	42	.030
Machinery (installation of not otherwise specified) .....	6	.030
Machine shops (not otherwise specified) .....	34	.020
Mantel setting .....	5	.030
Marble work .....	5	.050
Marble work (setting) .....	5	.030
Marine railways .....	3	.050
Masts (with or without machinery) .....	10	.025
Metal ceiling work .....	5	.030
Metal smokestacks or chimneys .....	5	.050
Metal (stamping) .....	26	.045
Millwrighting .....	2	.030
Mines (other than coal) .....	17	.025
Oils (working in) .....	39	.015
Ornamental metal work in buildings .....	5	.035
Packing cases .....	29	.025
Packing houses .....	43	.025

	Class.	Pct.
Pail (manufacturing) -----	29	.025
Painting of buildings or structures -----	5	.030
Paper (working in) -----	38	.015
Paper-hanging -----	5	.020
Paper mills -----	24	.020
Peat fuel -----	36	.020
Photo-engraving -----	41	.015
Pile-driving -----	3	.050
Pile-treating works -----	47	.025
Placing wires in conduits -----	6	.030
Plastering -----	5	.020
Plumbing work (outside) -----	5	.050
Plumbing work (inside) -----	5	.020
Porcelain ware -----	35	.020
Pottery (manufacturing) -----	35	.020
Powder works (manufacturing) -----	46	.100
Power plants (electric) or systems (operation) -----	13	.040
Power plants (steam) or systems (operation) -----	13	.025
Printing -----	41	.015
Pulp mills -----	24	.020
Quarries -----	17	.040
Railroad car making or repairing -----	28	.025
Road making (without blasting) -----	8	.020
Road making (with blasting) -----	8	.050
Rolling mills -----	18	.030
Roof work -----	5	.050
Rubber (working in) -----	38	.015
Safe-moving -----	4	.050
Sash -----	29	.025
Saw mills -----	10	.025
Sewers -----	1	.065
Shaft-sinking -----	1	.060
Shingle mills -----	10	.025
Ship building (with scaffolds) -----	9	.045
Ship rigging -----	9	.030
Ship wrighting -----	9	.030
Slate work -----	5	.050
Smelters (operation) -----	18	.030
Soap (making) -----	43	.015
Spars (with or without machinery) -----	10	.025
Staves -----	29	.025
Steamboats -----	20	.030
Steam heat, plants or systems (operating) -----	13	.025
Steam heating plants (construction) -----	6	.040
Steam pipes or boilers (covering) -----	6	.030
Steam railroads -----	7	.050

	Class.	Pct.
Steam shovels (making)_____	27	.025
Steel (manufacturing) _____	34	.020
Steel frame structures_____	5	.020
Steeple_____	2	.050
Stevedoring _____	42	.030
Stockyards _____	43	.025
Stone (with or without machinery)_____	31	.025
Stone crushing _____	17	.030
Stone setting _____	5	.030
Stone work _____	5	.050
Street grading (or other)_____	8	.035
Street railways _____	14	.030
Sub-aqueous works _____	3	.065
Tallow (making) _____	43	.015
Tanks (construction) _____	2	.040
Tanks (manufacturing) _____	27	.025
Tanneries _____	43	.020
Telegraph systems (construction)_____	6	.050
Telegraph systems (operating)_____	15	.030
Telephone systems (construction)_____	6	.050
Telephone systems (operating)_____	15	.030
Terra cotta (manufacturing)_____	35	.020
Textile (working in)_____	38	.015
Textile (not otherwise specified)_____	38	.015
Theater stage employes_____	45	.015
Tile (manufacturing) _____	35	.020
Tile-setting _____	5	.030
Tin (stamping) _____	26	.045
Towers (not metal framed)_____	2	.050
Trestles _____	2	.065
Tub (manufacturing) _____	29	.025
Tugs _____	20	.030
Tunnels _____	1	.065
Vegetables (working in)_____	39	.015
Veneer _____	29	.025
Ventilating systems (house)_____	6	.020
Water towers (construction)_____	2	.040
Water towers (manufacturing)_____	27	.025
Water works or systems (construction)_____	6	.050
Water works (operation)_____	23	.020
Wharf (operation) _____	42	.020
Wind mills (not metal framed)_____	2	.040
Wood (kindling) _____	29	.025
Wood fibre ware_____	29	.025
Wood ware _____	29	.025
Wood working (not otherwise specified)_____	29	.020

	Class.	Pct.
Wooden stair building-----	5	.020
Wool (working in)-----	38	.015
Zinc (manufacturing) -----	34	.020

Chapter 74, Section 17, Laws of 1911. Public and Contract Work—Whenever the state, county or any municipal corporation shall engage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county or municipality. If said work is being done by contract, the payroll of the contractor and the sub-contractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total payroll. The contractor and any sub-contractor shall be subject to the provisions of the act, and the state for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the sub-contractor his proportionate amount of the payment.

### § 141. Form of instructions to cities, counties, school, port, water way, drainage, or other municipal corporations (i):

1. All contractors doing public work in a given month to be listed.
2. Payrolls of contractors engaged in occupation named in section 4 of the Act must be filed monthly with the auditor, contractor, or clerk.
3. On the basis of such payrolls, officers shall enter the rate, class and contribution on each department of his work opposite each contractor's name on the within blank.
4. Accompany this report with checks or warrants payable to "Industrial Insurance Commission."
5. The Commission or its district assistant, or a traveling auditor, will audit contractors' payrolls so filed from time to time without notice; or, on request each month prior to the within report being forwarded to Olympia.
6. Segregate only the main divisions of a payroll into class, disregard incidental occupations—classify such items with the same work rendering odd jobs necessary.

### § 142. Form of letter of instructions to the employers and employés (j):

Gentlemen:

Acknowledging your request of recent date for supply of blanks, we take pleasure in enclosing the same herewith;

Form (k) must be made out by the employer in every case of accident coming under the law.

Form (l) must be made out by the employé or by his direction and with the assistance of the attending physician.

Form (m) must be made out by the attending physician in case of injury and Form (q) by the attending physician in case of death. Form (q) should be acknowledged before a notary.

(Unless the injured employé is attended by a regularly licensed physician, claim will not be considered.)

Form (r) must be made out by the undertaker in case of death and form (s) by the dependents or family of deceased in case of death. Both of these forms should be acknowledged before a notary.

Whenever possible, Form (o) should be signed by witnesses who saw the accident and forwarded promptly to this office.

Form (n) should be made out by the attending physician or surgeon as soon as the injured employé is discharged from treatment.

Please keep a supply of these forms on hand. Additional supplies will be forwarded promptly on request or may be procured at the following branch offices of the Commission:

Seattle, 524 Haight Building;  
Tacoma, 506 Bank of California Building;  
Bellingham, 346 First National Bank Building;  
Spokane, 410 Fernwell Building;  
Vancouver, 805 Washington Street;  
Aberdeen, 536 Finch Building.

Unless the injury causes the loss of over one day's time or results in a disability that impairs the earning capacity 5 per cent., it cannot be considered by the Commission.

Address all communications to—

THE INDUSTRIAL INSURANCE COMMISSION,  
Olympia, Washington.

### § 143. Form of employer's report of accident to employe with chart (k):

INSTRUCTIONS—Unless accident represents 5 per cent. loss of time or 5 per cent. disability, disregard.

Fill out and return blank to Commission within 5 days after accident.

Fill in all blanks with ink, using pen or typewriter.

#### Employer, Place, and Time.

Employer's name-----Office address—Street and No.-----  
City or village-----Business, goods produced, work done, or

kind of trade or transportation-----

Location of plant or place of work where accident occurred—Street  
and No.-----City or village-----Date on which acci-  
dent occurred-----Hour of day-----State whether  
accident happened on the premises or at the plant, or in course of  
employment, or away from the plant of employer; if away from  
plant state where and by whom injured-----

Who was in charge of work at place where accident occurred?-----

### The Injured Person.

Name-----Address-----Sex-----Age-----  
Speak English?-----If not, what language?-----  
Occupation when injured?-----Was it injured person's regu-  
lar work?-----Engaged in construction, operation or repair?  
-----Length of experience in said occupation-----  
Piece or time worker?-----Wages or average earnings per  
day -----What statement, if any, has injured person made?  
-----

### The Cause.

Name of machine, tool or appliance in connection with which acci-  
dent occurred?-----Hand or mechanical feed?-----  
Part on which accident occurred?-----Was it in any way out  
of order or ill-suited to the work?-----Were special instruc-  
tions given injured person in relation to its use?-----Was  
accident due to want of care of injured person?-----Was  
accident due to negligence on part of any person, if so, how?-----

In whose service was person who caused the accident?-----  
Was accident caused by removal of any safeguard?-----If so,  
was it removed by the injured workman, or any of his fellow work-  
men, or by the superintendent or foreman?-----

Names and addresses of witnesses-----

Describe in full how accident happened.....

How could accident have been prevented.....

### The Injury.

State fully nature and extent of injury—(Mark on attached chart location of injury)\*.....

### Medical Attendance.

Attending physician, or hospital where sent?.....

Name.....Address.....Probable length of disability—give your own opinion.....

### Dependents.

Is injured workman married or single?.....

If single, has injured party any dependents?.....

If so, give names and address of each.....

If married, give names and present address of husband or wife and children of injured workman.....

Number of children.....Ages of children.....Num-

ber of other dependents.....Ages of other dependents.....

Are father and mother living?.....If so, give address of each.....

(Signed).....

Official title or position.....

For.....

\*See pp. 379, 380 for charts.



# § 144. Form of workman's claim for compensation (1):

(Fill in all blanks with ink or indelible Pencil.)

## **Employer, Place, and Time.**

Employer's name -----  
 Office address—Street and No. -----  
 What kind of business? -----  
 Location of plant where accident occurred—Street and No. -----  
 City or village -----  
 Date on which accident occurred----- Hour of day -----  
 Did accident happen on employer's premises or plant?-----  
 In course of workman's proper employment?-----  
 Or away from employer's premises or plant?-----  
 If away from employer's premises or plant, state where and by  
 whom injured? -----

## **The Injured Person.**

Name in full -----  
 Address—(Street and No.) -----  
 Sex ----- Age ----- Speak English? -----  
 If not, what language?-----  
 Occupation when injured?----- Was this your regular work?-----  
 Length of experience, here and elsewhere, in this occupation?-----  
 Piece or time worker?----- Wages, or average earnings per day?-----  
 Place of birth?-----  
 Were you in a good state of health at the time of this accident?-----  
 Have you ever had a serious sickness?----- If so, what was it,  
 how long did it last and who was your attending physician?-----  
 Have you ever received any other injury?-----  
 If so, when, where, and what was its nature?-----  
 Have you any other source of income, such as lodge benefits, accident insurance, etc.? ----- If so, how much  
 and from what source derived?-----

## **The Cause.**

Name of machine, tool or appliance in connection with which accident occurred? -----  
 Hand or mechanical feed?-----  
 Part on which accident occurred?-----  
 Was accident caused by any fault of machines or appliances you were using? -----  
 Were all safeguards in their places at the time you were hurt?-----

If any safeguard was removed, did you remove it, or was it removed by any of your fellow workmen or any superintendent or foreman? -----

Describe in full how accident happened-----

### The Injury.

State fully nature and extent of injury-----

Names and addresses of witnesses-----

### Medical Attendance.

Attending physician or hospital where sent-----

Name ----- Address-----

### Dependents.

If married, give full name and address of wife or husband-----

Are you living as husband and wife?-----

If not, are you divorced?-----

If divorced, when and where?-----

If separated, how long have you lived apart?-----

Has any of your wages gone to the support of your wife or husband during this time? -----

How much per week?----- Have you any children under the age of sixteen? ----- If so, give name, age and address of each -----

If not in your care, give name and address of people with whom they live -----

Have you any of the following dependents: invalid child over the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grandmother, step-father, step-mother, grandson, granddaughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident, were dependent, in whole or in part, for their support upon your earnings? -----

If you have any of the above named dependents, give their names and addresses, together with their ages, and what support they were receiving from you-----

I, the undersigned, do hereby make application to the Industrial Insurance Commission of Washington for compensation for injuries received as aforesaid. I hereby state that the above facts with reference to myself and my injury are true and correct.

Signed this ----- day of -----, 191--, at-----  
County of -----, State of Washington.

(Sign full name here)-----

Signed and witnessed before:

-----  
-----

## § 145. Form of instructions to injured workman (1):

This form must be made out by every workman, injured in a dangerous occupation, who desires compensation from the state.

Unless the injury causes the loss of over one day's time or results in a disability that impairs the earning capacity 5 per cent., it cannot be considered by the Commission.

Do not hire a lawyer until you have asked the help of your employer, your attending physician or some member of the Commission's staff. If you are entitled to compensation the services of a lawyer are not necessary and you will receive your money without a lawsuit or other expense.

It is the duty of your attending physician to assist you in making out your claim. See section 12, paragraph (a) of the Workmen's Compensation Act (Chap. 74, Laws of 1911). "Where a workman is entitled to compensation under this act he shall file with the department his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman."

Call any doctor you like. The Commission has nothing to do with doctor's bills or hospital charges.

Get blanks from your employer, from the office of the Commission in Olympia, or from any of its branch offices as follows:

Seattle, 524 Haight Building;

Tacoma, 506 Bank of California Building;

Bellingham, 346 First National Bank Building;

Spokane, 410 Fernwell Building.

Send claim to nearest local office or directly to Olympia.

If possible, get a report of witnesses who saw the accident—Form (c). This blank can be secured at above offices and may save trouble later.

In case of death, relatives or dependents must make the claim and blanks will be furnished them when requested.

Fill out the blanks fully and carefully. Action upon your claim will be delayed unless reports are made out promptly and correctly.

Make out your claim AT ONCE. Prompt action will assist you in getting early compensation.

If required, you must allow the Commission's physician to examine you, but this examination will not cost you any money. It is paid for by the state. Don't refuse to be examined or your claim will not be considered.

### GENERAL INSTRUCTIONS.

Form (k) must be made out by the employer in every case of accident coming under the law.

Form (l) must be made out by the employé or by his direction and with the assistance of the attending physician.

Form (m) must be made out by the attending physician in case of injury and Form (q) by the attending physician in case of death.

Form (r) must be made out by the undertaker in case of death and Form (s) by the dependents or family of deceased in case of death.

Whenever possible, Form (o) should be signed by witnesses who saw the accident and forwarded to this office.

Form (n) must be made out by the attending physician or surgeon as soon as the injured employé is discharged from treatment.

Keep blanks on hand or ask your employer to keep them on hand for you. They don't cost him anything, and the sooner you make a proper claim, the sooner it will be settled.

For copies of "Rules and Regulations" and placards for posting, please apply to the Commission or to its branch offices in Seattle, Tacoma, Spokane, Bellingham, Aberdeen or Vancouver.

### CAUTION! WARNING!!

Don't take off any safeguard or protective device. If you do, and then get hurt, it decreases or lessens your compensation 10 per cent. (See section 9 of the law.)

Don't remove any safeguard yourself and don't let anyone else remove it. If the superintendent, foreman or any other person removes it, report the fact to the Commission.

Don't take any chances with machinery. If you injure yourself intentionally you are not entitled to any compensation.

Don't hesitate to lend a hand when anyone is hurt. It is to your interest and to your employer's interest to decrease or lessen the number of accidents and deaths and keep as many workmen at work as possible.

The state will give you reasonable compensation in case of injury. If you do not think it is sufficient, remember that it is much better than lawsuits and delays under the old system.

### § 146. Form of report of attending physician with charts (m):

(Fill in all blanks with ink, using pen or typewriter.)

#### Employer, Place, and Time.

Employer's name.....Office address—Street and No.....  
City or village.....What kind of business?.....Loca-

tion of plant where accident occurred—Street and No.-----  
 City or village-----Date-----Hour-----M

### The Injured Person.

Name in full-----City or town-----Address—Street  
 and No.-----Occupation-----Age-----Sex  
 -----Married or single-----  
 Does patient pay hospital dues?-----Is patient left or right-  
 handed?-----Has the patient been maimed or crippled by any  
 previous injury?-----If so, what?-----  
 -----

### The Injury.

Give description, stating the parts injured and supposed manner of  
 infliction, marking upon the chart upon the back of this report, the  
 site of injury-----  
 -----  
 -----  
 -----

Where treated-----Hour of treatment-----State who  
 rendered first treatment and what was done-----  
 -----  
 -----

State name and address of consultant or assistant-----  
 -----  
 -----

Give description of treatment-----  
 -----  
 -----

What was done with patient?-----Are the symptoms from  
 which he is suffering due to the aforesaid accident, or are they trace-  
 able to any previous accident, or other cause, and if so, what?-----  
 -----

### Medical Attendance.

Name of attending physician-----Office address—Street and  
 No.-----City or town-----

**Disability.**

Is the injury of so serious a nature as to wholly disable and prevent him from attending to any and all kinds of duties pertaining to his present occupation, or any other occupation?-----

If not wholly disabled, to what extent disabled?-----

Is he confined to the house?-----If not confined to the house, why do you consider that he is unable to attend to any part of his duties? -----

State opinion as to length of time patient will be disabled-----

In your opinion will any permanent disability follow?-----

State any additional information which you deem of interest as to extent of disability, impairment of earning capacity, etc. -----

(This report must contain account of all injuries no matter how trivial.)

I hereby certify that I am the attending physician of the injured person above mentioned; that I have set forth in the foregoing report all the facts in the case and that the statements contained therein are true and correct.

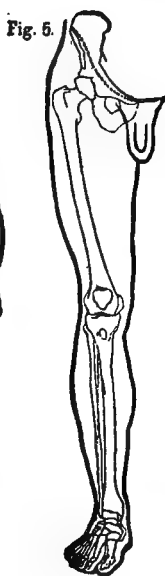
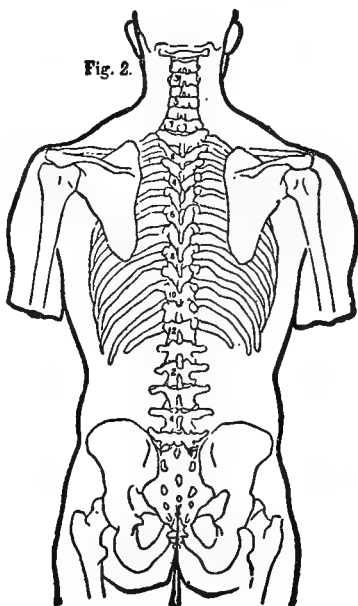
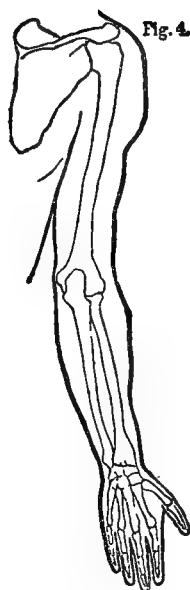
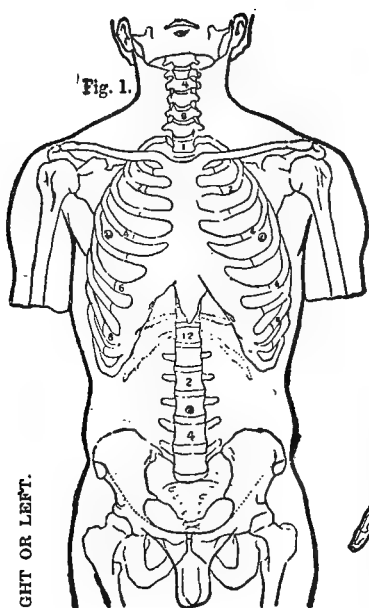
(Signed)-----

Attending Physician.

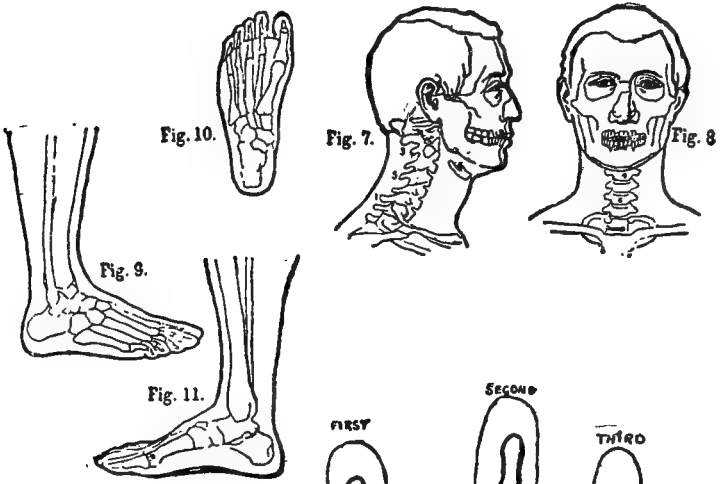
Date signed-----

(This form should be made out and forwarded to the office of the Commission in Olympia as soon as surgeon has made such careful examination as will enable him to make an intelligent report of the case. No fee is paid for making out this blank, but the Commission respectfully urges the co-operation of attending physicians in getting the real facts of each case before it.

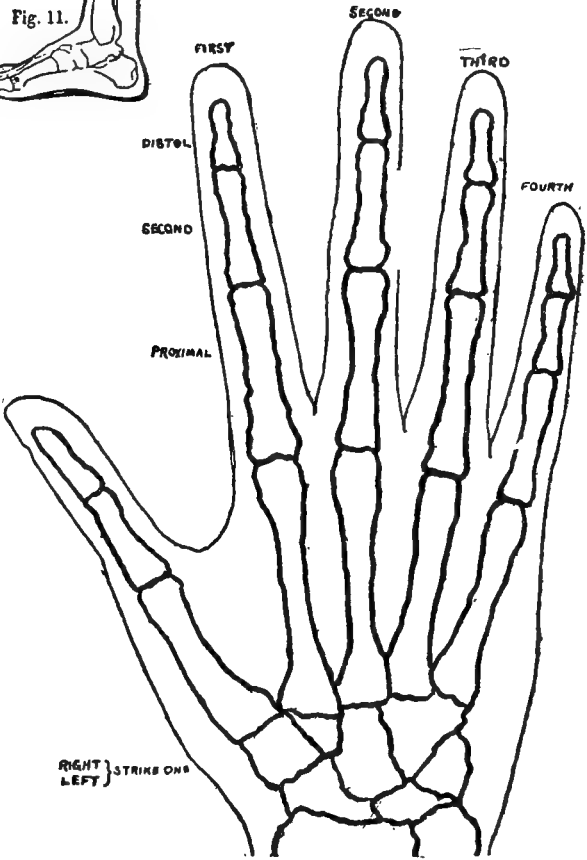
N. B.—Your patient cannot receive any Compensation from the State until this form is received and passed upon by the Chief Medical Advisor of the Commission.)



WHERE CHART SHOWS ONE SIDE ONLY INDICATE RIGHT OR LEFT.



WHERE CHART SHOWS ONE SIDE ONLY INDICATE RIGHT OR LEFT.





### § 147. Form of surgical discharge report (n):

\_\_\_\_\_, Wash.  
\_\_\_\_\_, 191\_\_\_\_  
I hereby notify you that\_\_\_\_\_ who came under my care at  
\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, having  
been injured at the plant or premises of \_\_\_\_\_ at \_\_\_\_\_  
on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, was discharged from  
treatment, the \_\_\_\_\_ day of \_\_\_\_\_ 191.

1. Developments which have retarded recovery\_\_\_\_\_
2. What operation, if any, performed since original report?\_\_\_\_\_
3. His condition is\_\_\_\_\_
4. State whether in your opinion any permanent disability will  
follow\_\_\_\_\_. If so, what?\_\_\_\_\_
5. The time of treatment was \_\_\_\_\_ days. 6. Was in hos-  
pital \_\_\_\_\_ days.
7. Will be able to resume work on or about the \_\_\_\_\_ day of  
\_\_\_\_\_, 191\_\_\_\_
8. If patient has already resumed work, for how many days was  
he unable to work?\_\_\_\_\_
9. Inclination of patient to follow surgeon's directions\_\_\_\_\_

#### 10. \*For statistical purposes only, please give the following data:

Cost of medical and surgical treatment\_\_\_\_\_ \$ \_\_\_\_\_  
Cost of medicine, medical and surgical supplies\_\_ \$ \_\_\_\_\_  
Cost of crutches and apparatus\_\_\_\_\_ \$ \_\_\_\_\_  
Hospital charges \_\_\_\_\_ \$ \_\_\_\_\_  
Ambulance charges \_\_\_\_\_ \$ \_\_\_\_\_  
Cost of nurse \_\_\_\_\_ \$ \_\_\_\_\_

\*Note: The above information will be held strictly confidential,  
and only used in the form of general tables, no individual figures  
being shown.

\_\_\_\_\_, Surgeon  
at \_\_\_\_\_

~~22~~ This report must be made out and forwarded to Olympia as soon  
as patient is discharged from professional care.

### § 148. Form of report of witnesses (o):

(Fill in all blanks with ink or indelible pencil.)

#### Employer, Place, and Time.

Employer's name\_\_\_\_\_ Location of plant where accident oc-  
curred—Street and No. \_\_\_\_\_ City or village \_\_\_\_\_ Date  
on which accident occurred \_\_\_\_\_ Hour of day \_\_\_\_\_

### The Injured Person.

Name in full-----Address—Street and No.-----Occu-  
pation when injured?-----

### The Cause.

Name of machine, tool or appliance in connection with which acci-  
dent occurred? -----

Was the machine or appliance in good repair?-----

Had the injured person been properly instructed in its use?-----

Were all safeguards in place when accident happened?-----

Was accident due to absence of safeguard?-----

If so, who removed safeguard?-----

Was the place where accident occurred well lighted?-----

Natural or artificial light?-----

Whose fault was cause of accident?-----

Where was the superintendent or foreman at the time of accident?  
-----

What statement did injured person make at the time of accident?  
-----  
-----

Was injured person in any way careless or negligent in his work?  
-----

Was his eyesight or hearing defective?-----

Describe in full how accident happened.-----  
-----  
-----

How could accident have been prevented?-----

### The Injury.

State fully nature and extent of injury-----  
-----  
-----

### Dependents.

If married, give full name and address of wife or husband-----  
-----

Has he any children under the age of sixteen?-----

If so, how many?-----

If single, what persons are dependent upon the injured person's  
earnings? -----  
-----

I hereby certify that I witnessed the accident described here-

with and declare that the above is a true and correct account of the same as I saw it.

(Sign Here) 1\_\_\_\_\_Witness.

2\_\_\_\_\_Witness.

3\_\_\_\_\_Witness.

Note: Do not try to answer questions by hearsay. Answer only according to your personal, first-hand knowledge.

#### FORM OF INSTRUCTIONS TO WITNESSES.

This form should be made out in every case where there are witnesses to an accident, for which compensation is desired. It is to the interest of both employer and employé to have a report made by witnesses in every case.

The making out of this form is not compulsory, and employers cannot compel their employés to sign it, but the Commission requests that both employers and employés co-operate for the purpose of getting at the exact facts.

The statements appearing on this form do not have to be acknowledged or sworn to. They can be made out by anyone and signed by the witness at any time or place.

The advantage of this form to the workman or his family making claim is that the report of witnesses makes the claim file complete and is likely to hasten its settlement.

The advantage to the employer is that the report of witnesses constitutes a cross-check on the claim and operates to prevent fraud or collusion.

#### GENERAL INSTRUCTIONS.

Form (k) must be made out by the employer in every case of accident coming under the law.

Form (l) must be made out by the employé or by his direction and with the assistance of the attending physician.

Form (m) must be made out by the attending physician in case of injury and Form (q) by the attending physician in case of death.

(Unless the injured employé is attended by a regularly licensed physician, claim will not be considered.)

Form (r) must be made out by the undertaker in case of death and Form (s) by the dependents or family of deceased in case of death.

Whenever possible, Form (o) should be signed by witnesses who saw the accident and forwarded promptly.

Form (n) must be made out by the attending physician or surgeon as soon as the injured employé is discharged from treatment.

Keep blanks on hand or ask your employer to keep them on hand for you. They don't cost him anything, and the sooner you make a proper claim, the sooner it will be settled.

For copies of "Rules and Regulations" and placards for posting, please apply to the Commission or to any of its branch offices as follows:

Seattle, 524 Haight Building;  
Tacoma, 506 Bank of California Building;  
Bellingham, 346 First National Bank Building;  
Spokane, 410 Fernwell Building;  
Vancouver, 805 Washington Street;  
Aberdeen, 536 Finch Building.

Unless the injury causes the loss of over one day's time or results in a disability that impairs the earning capacity 5 per cent., it cannot be considered by the Commission.

### § 149. Form of surgeon's special report with charts (p):

(Fill in all blanks with ink, using pen or typewriter.)

Name of patient.....Address.....Nativity.....  
Age.....Married, Single, Widowed. Where is the patient?  
.....Date of accident.....Hour.....M. Place of  
accident .....

1. Give description of injury, .....  
stating supposed manner .....  
of infliction, etc. ....

2. Give description of the .....  
treatment being employed .....  
in this case in full. ....

3. What operations have .....  
been performed and with .....  
what results? .....

4. Name and address of sur- .....  
geon who operated, and .....  
assistant. ....

5. Has repair been delayed .....  
from any cause? If so, .....  
what? .....

6. Was there any previous .....  
disability or deformity? .....  
If so, what? .....

7. Is there evidence ofluet- .....  
ic, gonorrheal, or tuber- .....  
cular infection or alcohol- .....  
ism? If so, what? .....

8. Temperament of patient, \_\_\_\_\_  
 any evidence of hysteria, \_\_\_\_\_  
 neurasthenia or hypo- \_\_\_\_\_  
 chondria. If so, what? \_\_\_\_\_
- 
9. Any occupational disease? \_\_\_\_\_
- 
10. Temporary disability. \_\_\_\_\_
- 
11. What is the PERMANENT \_\_\_\_\_  
 disability of this case, if \_\_\_\_\_  
 any? \_\_\_\_\_  
 Mark on chart EXACT lo- \_\_\_\_\_  
 cation of same.\* \_\_\_\_\_
- 
12. Inclination of patient to \_\_\_\_\_  
 follow surgeon's direc- \_\_\_\_\_  
 tions, etc. \_\_\_\_\_  
 Give a summary of the \_\_\_\_\_  
 case as you see it. \_\_\_\_\_
- 
13. Peculiar conditions and \_\_\_\_\_  
 your findings. \_\_\_\_\_
- Signature of Surgeon\_\_\_\_\_, M. D.
- Date\_\_\_\_\_ Address\_\_\_\_\_Washington.

### § 150. Form of proof of death by physician (q) :

(To be Filled Out by the Attending Physician or Deceased.)

(Fill in all blanks with ink, using pen or typewriter.)

1. Name of the deceased in full.\_\_\_\_\_
  2. (a) How long have you known the deceased?\_\_\_\_\_
  - (b) How long have you been medical adviser of deceased?\_\_\_\_\_
  3. (a) Age at death\_\_\_\_\_years. (b) Married or single\_\_\_\_\_
  - (c) Names and ages of children under 16\_\_\_\_\_
- 
4. Place of death (Give street number, city or town, and state):  
 Street\_\_\_\_\_City or town\_\_\_\_\_State\_\_\_\_\_
5. (a) Occupation at the time of death.\_\_\_\_\_
- (b) Nationality \_\_\_\_\_
6. Date of your first visit or prescription\_\_\_\_\_
7. Date of your last visit\_\_\_\_\_
8. Date of death\_\_\_\_\_
9. (a) State the remote cause of death.\_\_\_\_\_
- (b) State explicitly the immediate cause of death.\_\_\_\_\_
10. Did you see the body of the deceased and did you identify it as  
 that of the injured workman at\_\_\_\_\_
- while in the employ of\_\_\_\_\_, of\_\_\_\_\_?

\*See pp. 379, 380 for charts.

11. Was there a coroner's inquest held?\_\_\_\_\_
12. Was deceased attended by any other physician during last illness? If so, state his name and address.\_\_\_\_\_  
\_\_\_\_\_
13. Was health of deceased impaired by intemperance or any pernicious habit?\_\_\_\_\_ If so, what?\_\_\_\_\_  
\_\_\_\_\_
14. Have you any interest in this claim?\_\_\_\_\_
15. Have you stated all the material facts connected in any way with this death?\_\_\_\_\_
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?\_\_\_\_\_  
Dated this\_\_\_\_\_day of\_\_\_\_\_, 191\_\_\_\_

\_\_\_\_\_  
Attending Physician.

STATE OF\_\_\_\_\_ } ss: OATH.  
County of\_\_\_\_\_ }

On this\_\_\_\_\_ day of\_\_\_\_\_, A. D. 191\_\_\_\_, personally appeared before me, the above named\_\_\_\_\_  
physician in regular standing, and made oath that the answers by him above made and subscribed are true.

\_\_\_\_\_  
Notary Public or Justice of the Peace.

(Unless officer taking acknowledgment has OFFICIAL SEAL, certificate of appointment will be required.)

§ 151. Form of proof of death from undertaker (r):

(Fill in all blanks with ink, using pen or typewriter.)

STATE OF\_\_\_\_\_, County of\_\_\_\_\_, ss:  
\_\_\_\_\_, of \_\_\_\_\_,

says, that he is a duly licensed undertaker of\_\_\_\_\_at  
(City or town)

Street Number\_\_\_\_\_; that as such he was required on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, to prepare the dead body of\_\_\_\_\_for burial; that he placed said body in a coffin and placed said coffin, containing the said body, in a\_\_\_\_\_in \_\_\_\_\_cemetery. That he was directed to conduct such burial by\_\_\_\_\_  
who authorized the following items of expense:

- Moving remains to morgue.
- Washing, shaving and dressing.
- Embalming.
- Telephone.
- Underclothes and hose.

Slippers.  
 Burial Robe.  
 Funeral Notices.  
 Cemetery lot.  
 Opening and filling grave.  
 Lining grave.  
 Outside box.  
 Grave vault.  
 Taking box or vault to cemetery.  
 Casket coffin.  
 Hearse.  
 Personal service.  
 Use of gloves.  
 Use of double rigs.  
 Use of single rigs.  
 Funeral service by.  
 Remains to boat.  
 Wagon deliveries.

Total-----\$

That I was informed said bill would be paid by-----

That no part of said bill of expense so authorized for said burial  
 has been paid, except—

\$----- by -----

\$----- by -----

\$----- by -----

Subscribed and sworn to before me, this-----day of  
 -----, A. D. 191-----

-----  
 Notary Public.

(Note: Unless officer taking acknowledgement has OFFICIAL  
 SEAL, certificate of appointment will be required.)

Certificate of person who made funeral arrangements will be  
 required below unless itemized bill of undertaker endorsed "correct"  
 by such person, is attached.

#### CERTIFICATE OF PERSON AUTHORIZING BURIAL.

-----hereby certify that I have read the foregoing affidavit of  
 -----undertaker-----; that I authorized the  
 items of expense therein amounting to \$-----, as the-----  
 of deceased workman.

Signed-----

(Note: The entire amount allowed for burial under the Work-  
 men's Compensation Act can not exceed \$75.00.)

#### MEMORANDUM BY CORONER, UNDERTAKER OR FRIENDS.

(To be furnished in case no relatives or dependents are present  
 at burial.)

Address of Relatives or Dependents of Deceased:

	Name.	Relationship.	Address.
1.	-----	-----	-----
2.	-----	-----	-----
3.	-----	-----	-----
4.	-----	-----	-----

§ 152. Form of dependent's claim for compensation. (s)

What is your full name?-----

State your residence. Street----- Town-----

County----- State-----

How old are you? (Give age at last birthday)-----years.

Date of birth----- In what capacity, or

by what right, do you make the claim?-----

How long have you known the deceased?-----

State the full name of the deceased-----

Give the following particulars relating to the deceased:

Where and when born? Place-----

-----County-----Year-----Month-----Day-----

(Note: It is important that the town, city, etc., should be mentioned.)

If married, when and where?-----

Where did deceased reside at time of death. Street and place

-----

Where and when did deceased die? Street and place-----

Date-----

In what occupation was the deceased working when the injuries occurred that caused death?-----

How long prior to death was deceased confined to the house?

-----

What was the cause of death?-----

Had the deceased any source of income beside his wages, if so, what?-----

Did the deceased carry accident, life or lodge insurance or benefits; if so, what amount and in what companies or lodges?

-----

What ailment, disease, illness, weakness, infirmity, disability, or injury has deceased ever had? State facts fully-----

State the name and residence of every physician who has prescribed for or attended the deceased during the past two years-----



### § 153. Affidavit to foregoing form.

STATE OF WASHINGTON, County of \_\_\_\_\_, ss:

(Strike out paragraphs following which are contrary to fact:)

Being first duly sworn, I the undersigned, depose and say:

That I am a legal guardian of\* \_\_\_\_\_ child  
(1) \_\_\_\_\_ children

That I am a\* \_\_\_\_\_ of \_\_\_\_\_  
Deceased Workman, whose death resulted from injury occurring on  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in course of hazardous  
employment at \_\_\_\_\_, Washington, as heretofore reported  
to the Industrial Insurance Commission:

(2) That I am and have remained unmarried since said death;

(3) That said Deceased Workman left surviving him the fol-  
lowing children not more than sixteen (16) years of age, and whose  
birth dates are as follows to-wit:

Name.	Date of Birth.	Relationship to Deceased Workman.
_____	_____	_____
_____	_____	_____

(4) That said Deceased Workman left surviving him no widow  
—widower—but \_\_\_\_\_ child—children—under sixteen years of  
age named in paragraph (3) hereof, who are in the lawful custody  
of \_\_\_\_\_ as \_\_\_\_\_ thereof;

(5) That said Deceased Workman left surviving him no widow  
—widower or child under the age of 16 years, but left \_\_\_\_\_  
dependent\_\_\_\_, necessarily receiving support in whole or in part from  
his earnings, and who actually received during the twelve (12)  
months next preceding the injury the average monthly support  
stated opposite their name\_\_\_\_, viz.:

Name.	Birth Date.	Actual Necessity for Dependency.	Average Monthly Support.
_____	_____	_____	\$_____
_____	_____	_____	\$_____

(6) That the actual and necessary support given the dependents  
named in paragraph (5) "during the twelve months next pre-  
ceding the occurrence of the injury" was monthly as follows:

(1) \$\_\_\_\_\_ in \_\_\_\_\_; (2) \$\_\_\_\_\_ in \_\_\_\_\_; (3) \$\_\_\_\_\_ in \_\_\_\_\_;  
(4) \$\_\_\_\_\_ in \_\_\_\_\_; (5) \$\_\_\_\_\_ in \_\_\_\_\_; (6) \$\_\_\_\_\_ in \_\_\_\_\_;  
(7) \$\_\_\_\_\_ in \_\_\_\_\_; (8) \$\_\_\_\_\_ in \_\_\_\_\_; (9) \$\_\_\_\_\_ in \_\_\_\_\_;  
(10) \$\_\_\_\_\_ in \_\_\_\_\_; (11) \$\_\_\_\_\_ in \_\_\_\_\_; (12) \$\_\_\_\_\_ in \_\_\_\_\_

(7) That said Deceased Workman was under the age of twenty-

\*Insert the correct term; as widow, widower, legal dependent,  
guardian of children, etc.

one (21) years, birth date having been-----, and left surviving him-----parents, as follows:

Father----- Post Office Address-----

Mother----- Post Office Address-----

(8) That paragraphs numbered ----- were intentionally stricken from the foregoing Affidavit Form, and that the facts stated in the remaining portions thereof are true.

Dated this----- day of-----, A. D. 191-----

(Sign here)-----

Claimant.

STATE OF-----, County of-----, ss:

OATH.

On this ----- day of -----, A. D. 191-----, personally appeared before me, the above named----- and made oath that the answers by him, her, or them above made and subscribed are true, and that he, she, or they has or have concealed no fact from the Industrial Insurance Commission.

-----  
Notary Public or Justice of the Peace.

(Unless officer taking acknowledgment has OFFICIAL SEAL, certificate of appointment will be required.)

§ 154. Form of affidavit of claimant for compensation—Survivors of deceased workmen. (t)

(Strike out portions contrary to fact.)

STATE OF WASHINGTON, -----, County, ss:

Claim No. ----- Class----- Year----- Month ending-----

Being first duly sworn, I the undersigned, depose and say:

(1) That I am a\*----- of ----- Deceased Workman, whose death resulted from injury occurring on the ----- day of -----, 19--, in course of hazardous employment at -----, Washington, as heretofore reported to the Industrial Insurance Commission;

(2) That I am and have remained unmarried since said death;

(3) That said Deceased Workman left surviving him the following children not more than sixteen (16) years of age, and whose birth dates are as follows, to-wit:

Name.	Date of Birth.	Relationship to Deceased Workman.
-----	-----	-----
-----	-----	-----

(4) That said Deceased Workman left surviving him no widow—widower—but-----child—children—under sixteen years of

\*Insert the correct term; as widow, widower, legal dependent, guardian of children, etc.

age named in paragraph (3) hereof, who are in the lawful custody of \_\_\_\_\_ as \_\_\_\_\_ thereof;

(5) That said Deceased Workman left surviving him no widow—widower or child under the age of 16 years, but left \_\_\_\_\_ dependent—, necessarily receiving support in whole or in part from his earnings, and who actually received during the twelve (12) months next preceding the injury the average monthly support stated opposite their name—, viz.:

Name.	Birth Date.	Actual Necessity for Dependency.	Average Monthly Support.
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

(6) That said Deceased Workman was under the age of twenty-one (21) years, birth date having been \_\_\_\_\_ and left surviving him \_\_\_\_\_ parents, as follows:

Father _____	Post Office Address _____
Mother _____	Post Office Address _____

(7) That paragraphs numbered \_\_\_\_\_ were intentionally stricken from the foregoing Affidavit Form, and that the facts stated in the remaining portions thereof are true.

(Sign here) \_\_\_\_\_

(Write name clearly.)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_  
(SEAL) \_\_\_\_\_

(Title of Office.)

## § 155. Form of summary and award. (u)

### Employer, Place, and Time.

Firm name _____	Firm No. _____
Location of plant _____	Payroll filed _____
Demand sent _____	Paid _____

### The Injured Person.

Employé _____	Age, if not 21 _____	Form 36 Sent
Address last given _____		Date _____
_____		Date _____
_____		Date _____
_____		Date _____
_____		Date _____
_____		Date _____

### The Injury.

Date of accident \_\_\_\_\_ Character \_\_\_\_\_

Time loss, actual: \_\_\_\_\_ days, at \$ \_\_\_\_\_; Total, \$ \_\_\_\_\_

Maximum monthly allowance, \$ \_\_\_\_\_

Reduced by 60 per cent. rule to \$ \_\_\_\_\_

Name	Age	Expectancy	Relationship	Date Dependency Expires	Amount of Pension	Amount of Reserve
1. -----	-----	-----	-----	-----	-----	-----
2. -----	-----	-----	-----	-----	-----	-----
3. -----	-----	-----	-----	-----	-----	-----
4. -----	-----	-----	-----	-----	-----	-----
5. -----	-----	-----	-----	-----	-----	-----
6. -----	-----	-----	-----	-----	-----	-----

### Award.

#### I. Partial Payment:

Monthly allowance ending\*-----;  
 continuing total disability-----\$-----  
 Advance on account, lump sum, pending investigation--\$-----

#### II. Lump Sum Settlement:

Time loss, temporary total disability-----\$-----  
 Permanent partial disability-----\$-----

#### III. Monthly Pensions:\*

Permanent total disability, beginning-----\$-----  
 To dependents of deceased workman, beginning--\$-----

#### IV. Burial Expenses allowed to-----\$-----

#### V. Reserve "for the case"-----\$-----

Computed ----- Payment ordered, date-----

Certified correct -----

Claim Agent.

Chairman.

Approved -----

Chief Physician.

Commissioner.

\*Reviewed and further payment ordered for:

-----  
 Commissioner.

Balance to--	-----	-----	-----	-----	-----
Month to--	-----	-----	-----	-----	-----
Amounts --	-----	-----	-----	-----	-----
Initials --	-----	-----	-----	-----	-----
Date -----	-----	-----	-----	-----	-----
Balance to--	-----	-----	-----	-----	-----
Month to--	-----	-----	-----	-----	-----
Amounts --	-----	-----	-----	-----	-----
Initials --	-----	-----	-----	-----	-----
Date -----	-----	-----	-----	-----	-----

Voucher No. \_\_\_\_\_ Warrant No. \_\_\_\_\_

Remarks: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**§ 156. Form of partial payment voucher—Permanent partial disability—Full payment—Total temporary disability—Partial payment. (v)**

Month \_\_\_\_\_

Year \_\_\_\_\_

Claim No \_\_\_\_\_

Class \_\_\_\_\_

To \_\_\_\_\_, Dr.

Firm No \_\_\_\_\_

(Postoffice address) \_\_\_\_\_

Compensation under Chapter 74, Session Laws  
 1911, in PARTIAL PAYMENT of claim of above  
 claimant for \_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_ occurring on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_,  
 at \_\_\_\_\_, Washington, as allowed and approved  
 by the findings and order of the Industrial Insurance  
 Commission on record, file (page \_\_\_\_\_) in the  
 Commission's office, this PARTIAL PAYMENT being  
 computed under rules established in Section 5, Sub-  
 division (d) of said Statute. \_\_\_\_\_ \$ \_\_\_\_\_

Also full payment for the permanent partial disability  
 sustained—Sub-division (f) \_\_\_\_\_ \$ \_\_\_\_\_

STATE OF WASHINGTON, County of \_\_\_\_\_, ss:

Received at Olympia, Washington, \_\_\_\_\_, 191\_\_\_\_, of the  
 STATE AUDITOR, warrant on the State Treasurer, No. \_\_\_\_\_,  
 for the sum of\* \_\_\_\_\_ Dollars,

(Do not fill in this amount)

\*\$ \_\_\_\_\_, and I, the undersigned, do hereby

(Leave this space blank)

certify that the injury above mentioned actually happened to me, as  
 heretofore reported to the Industrial Insurance Commission; that I  
 hereby acknowledge receipt of the amount above mentioned as  
 PARTIAL COMPENSATION for said injury.

(Sign Here) \_\_\_\_\_

(Write Name Clearly) Payee.

Witnesses to Signature:

Date of Signature \_\_\_\_\_

\_\_\_\_\_

Postoffice address \_\_\_\_\_

\_\_\_\_\_

Postoffice address \_\_\_\_\_

\*Leave amount blank, to be filled by Auditor.

STATE OF WASHINGTON, County of \_\_\_\_\_, ss:

We, the Industrial Insurance Commission of the State of Washington, hereby certify that the claim for compensation above mentioned has been investigated, approved and the above partial payment regularly allowed by the Commission in the sum of \_\_\_\_\_ Dollars, said sum to be paid out of the "Accident Fund" as by Chapter 74, Session Laws 1911, required and provided.

\_\_\_\_\_  
Chairman.

Attest:

\_\_\_\_\_  
Commissioner.

\_\_\_\_\_  
Secretary.

\_\_\_\_\_  
Commissioner.

**§ 157. Form of partial payment voucher—Total temporary disability—Monthly allowance. (vv)**

STATE OF WASHINGTON.

Month ending \_\_\_\_\_

Year \_\_\_\_\_ To \_\_\_\_\_ Dr.

Claim No. \_\_\_\_\_

Class \_\_\_\_\_ (Postoffice address) \_\_\_\_\_

Compensation under Chapter 74, Session Laws 1911, in PARTIAL PAYMENT of claim of above claimant for \_\_\_\_\_

\_\_\_\_\_ occurring on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, at \_\_\_\_\_, Washington, as allowed and approved by the findings and order of the Industrial Insurance Commission on record, file (page \_\_\_\_\_) in the Commission's office, this PARTIAL PAYMENT being computed under rules established in Section 5, Subdivision (d) of said Statute \_\_\_\_\_

STATE OF WASHINGTON, County of \_\_\_\_\_, ss:

Received at Olympia, Washington, \_\_\_\_\_, 191\_\_\_\_, of the STATE AUDITOR, warrant on the State Treasurer, No. \_\_\_\_\_, for the sum of\* \_\_\_\_\_ Dollars,

(Do not fill in this amount)

\*\$ \_\_\_\_\_, and I, the undersigned, do hereby certify (Leave this space blank)

fy that the injury above mentioned actually happened to me, as heretofore reported to the Industrial Insurance Commission; that I hereby acknowledge receipt of the amount above mentioned as PARTIAL COMPENSATION for said injury.

(Sign Here) \_\_\_\_\_

(Write Name Clearly) Payee.

\*Leave amount blank, to be filled by Auditor.

Witnesses to Signature	Date of Signature_____
_____	Postoffice address_____
_____	Postoffice address_____

STATE OF WASHINGTON, County of\_\_\_\_\_, ss :

We, the Industrial Commission, of the State of Washington, hereby certify that the claim for compensation above mentioned has been investigated, approved and the above partial payment regularly allowed by the Commission in the sum of\_\_\_\_\_Dollars, said sum to be paid out of the "Accident Fund" as by Chapter 74, Session Laws 1911, required and provided.

\_\_\_\_\_  
Chairman.

Attest:

\_\_\_\_\_  
Commissioner.

\_\_\_\_\_  
Secretary.

\_\_\_\_\_  
Commissioner.

### § 158. Form of pension voucher—Permanent total disability. (w)

	Year_____
	Month ending _____
STATE OF WASHINGTON,	Claim No _____
To_____Dr.	Class_____
	Distribution _____

Post Office Address:\_\_\_\_\_

COMPENSATION under Chapter 74, Session Laws 1911, on account of permanent total disability resulting from injury occurring on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_, at\_\_\_\_\_Washington, as allowed and approved by Order of the Industrial Insurance Commission on record, file (page\_\_\_\_\_) in the Commission's office, as computed on the following relationship:

Name	Age	Relationship	Amount
_____	_____	_____	\$_____
_____	_____	_____	\$_____
_____	_____	_____	\$_____
_____	_____	_____	\$_____
Total_____			\$_____

RECEIVED at Olympia, Washington, this\_\_\_\_\_day of\_\_\_\_\_19\_\_, of the State Auditor, Warrant on the State Treasurer No.\_\_\_\_\_for the sum of\*\_\_\_\_\_Dollars (\*\$\_\_\_\_\_) in full compensation and pension on account of said injury for the month ending\_\_\_\_\_, 19\_\_, and I hereby fully release and discharge the

\*Leave amount blank—to be filled in by Auditor.

State of Washington from any and all further liability or obligation and other or further claims for compensation or pension for said month ending-----, on account of said injury.

(Sign Here)-----

(Write Name Clearly) Payee.

Witnesses:

----- Post Office Address-----

----- Post Office Address-----

# § 159. Form of pension voucher—Survivors of deceased workman. (ww)

Year-----

Month ending ---

STATE OF WASHINGTON,

Claim No.-----

To-----Dr.

Class-----

Post Office Address:-----

Compensation under Chapter 74, Session Laws 1911, on account of the death of-----, resulting from injury occurring on the-----day of-----, 19--, at-----, Washington, as allowed and approved by the Order of the Industrial Insurance Commission, on record, file (page -----) in the Commission's office, as computed on the following relationship:

Name	Age	Relationship	Amount
-----	-----	-----	\$-----
-----	-----	-----	\$-----
-----	-----	-----	\$-----
-----	-----	-----	\$-----
-----	-----	-----	\$-----
Total-----			\$-----

RECEIVED at Olympia, Washington, this-----day of----- 19--, of the State Auditor, Warrant on the State Treasurer No.----- for the sum of\*-----Dollars (\*\$-----) in full compensation and pension on account of said injury and death for the month ending-----, 19--, and I hereby fully release and discharge the State of Washington from any and all further claims for compensation or pension for said month ending-----, on account of said death.

(Sign Here)-----

(Write Name Clearly) Payee.

Witnesses:

----- Post Office Address-----

----- Post Office Address-----

\*Leave amount blank—to be filled in by Auditor.



§ 160. Form of burial expense voucher—Account of deceased workman. (x)

Claim\_\_\_\_\_

Class \_\_\_\_\_

STATE OF WASHINGTON,

To\_\_\_\_\_, Dr.

Postoffice address)\_\_\_\_\_

Compensation under Chapter 74, Session Laws 1911, for \$\_\_\_\_\_ Burial Expense of\_\_\_\_\_, who sustained fatal injury on the\_\_\_\_\_day of\_\_\_\_\_, 191\_\_\_\_, at\_\_\_\_\_ Washington, as allowed and approved by the order of the Industrial Insurance Commission on record, file (page \_\_\_\_\_) in the Commission's office.

STATE OF WASHINGTON, County of\_\_\_\_\_, ss:

Received at Olympia, Washington, this\_\_\_\_\_day of\_\_\_\_\_, 191\_\_\_\_, of the State Auditor, warrant on the State Treasurer No.\_\_\_\_\_ for the sum of\*\_\_\_\_\_Dollars,

(Do not fill in this amount)

\*(\$\_\_\_\_\_ in full compensation as allowed under (Leave this space blank)

the above mentioned act, for the burial of said deceased by\_\_\_\_\_ undertakers; and I hereby certify that the above mentioned amount is true and correct and is due for services performed by me as said undertaker in reimbursement on the amount of \$\_\_\_\_\_ paid by me to said undertaker.

Signature\_\_\_\_\_

For\_\_\_\_\_Payee.

Subscribed and sworn to before me this\_\_\_\_\_day of\_\_\_\_\_, A. D. 191\_\_

Notary Seal Here. \_\_\_\_\_

(Title of office)\_\_\_\_\_

STATE OF WASHINGTON, County of Thurston, ss:

We, the Industrial Insurance Commission of the State of Washington, hereby certify that the claim for burial expense above mentioned has been investigated, approved and regularly allowed by the Commission in the sum of\_\_\_\_\_Dollars, said sum to be paid out of the "Accident Fund" as by Chapter 74, Session Laws 1911, required and provided.

Attest:

Chairman.

Commissioner.

Secretary.

Commissioner.

\*Leave amount blank to be filled by auditor.

§ 161. Form of final settlement voucher. (y)

STATE OF WASHINGTON,

To \_\_\_\_\_, Dr.

(Claim No.\_\_\_\_) (Class No.\_\_\_\_) (Postoffice address)\_\_\_\_\_

AWARD, Computed on basis of time lost\_\_\_\_\_working

days, \_\_\_\_\_\$\_\_\_\_\_ \$\_\_\_\_\_

Permanent Partial Disability sustained\_\_\_\_\$\_\_\_\_\_

being compensation under Chapter 74, Session Laws 1911, in  
full settlement of Claim of above claimant for injury\_\_\_\_\_

\_\_\_\_\_

occurring on the\_\_\_\_\_day of\_\_\_\_\_, 191\_, at  
\_\_\_\_\_, Washington, as allowed and approved by the  
findings and order of the Industrial Insurance Commission  
on record, file (page\_\_\_\_\_) in the Commission's office.

STATE OF WASHINGTON, County of\_\_\_\_\_, ss:

Received at Olympia, Washington\_\_\_\_\_, 191\_, of  
the STATE AUDITOR, warrant on the State Treasurer, No.\_\_\_\_\_,  
for the sum of\*\_\_\_\_\_Dollars,

(Do not fill in this amount)

\*\$\_\_\_\_\_, I the undersigned, do hereby certify

(Leave this space blank)

that the injury above mentioned actually happened to me, as hereto-  
fore reported to the Industrial Insurance Commission; that I here-  
by acknowledge receipt of the amount above mentioned as full and  
complete compensation for said injury, and I hereby fully release  
and discharge the State of Washington from any and all further  
liability or obligations for or on account of said injury and from  
any other or further claims for compensation on account thereof.

(Sign Here)\_\_\_\_\_

(Write Name Clearly) Payee.

Witnesses to Signature:

\_\_\_\_\_ Postoffice address\_\_\_\_\_

\_\_\_\_\_ Postoffice address\_\_\_\_\_

STATE OF WASHINGTON, County of\_\_\_\_\_, ss:

We, the Industrial Insurance Commission of the State of Wash-  
ington, hereby certify that the claim for compensation above men-

\*Leave amount blank to be filled by auditor.

tioned has been investigated, approved and regularly allowed by the Commission in the sum of \_\_\_\_\_ Dollars, said sum to be paid out of the "Accident Fund" as by Chapter 74, Session Laws 1911, required and provided.

-----  
Chairman.

Attest:

-----  
Commissioner.

-----  
Secretary.

-----  
Commissioner

§ 162. Form of election to receive compensation and assignment of claim—Injuries by defaulting employer. (z)

WHEREAS, on or about \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_  
(Name of Employé.)  
employed by \_\_\_\_\_,

(Name of Employer)  
of \_\_\_\_\_, while in the course of his employment,  
received injuries as follows:

-----  
(State Nature and Result of Injuries)  
-----  
-----  
-----

and,

WHEREAS, such injuries occurred during a period of default in the payment of a premium due by such employer under the provisions of Chapter 74, of the Laws of 1911, after demand for the payment thereof;

NOW, THEREFORE, \_\_\_\_\_  
(Name of Injured Person, Widow, Children, or Dependents,  
as the case may be)

-----  
hereby elect\_\_ to receive compensation for such injuries under and in accordance with said Chapter 74, Laws of 1911; and,

In consideration of the premises hereby assign\_\_ and transfer\_\_

to the State of Washington, for the benefit of the accident fund created by said act, any and all rights or causes of action, and all claims and demands against said employer arising out of the injuries above described.

Witnesses: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**§ 163. Election to receive compensation and assignment of claim—Injury by other than employer. (zz)**

Whereas, on or about \_\_\_\_\_, 19\_\_\_\_,  
\_\_\_\_\_, employed by \_\_\_\_\_,

(Name of employé.)

(Name of employer.)

of \_\_\_\_\_, while in the course of his employment, away from the plant of his employer, received injuries as follows:

\_\_\_\_\_ (State nature and result of injuries), and,

Whereas, such injuries were due to the negligence or wrong of another not in the same employ, viz., \_\_\_\_\_, servants or agents;

Now, therefore, \_\_\_\_\_ (Name of injured person, widow, children or dependents, as the case may be) hereby elect\_\_ to receive compensation for such injuries under and in accordance with the provisions of Chapter 74, of the Laws of 1911; and,

In consideration of the premises hereby assign\_\_ and transfer\_\_ to the State of Washington, for the benefit of the accident fund created by said act, any and all rights or causes of action, and all claims and demands against any and all persons and corporations arising out of the injuries above described.

Witnesses: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## STATEMENT OF CONDITION OF ACCIDENT FUND JUNE 1, 1912.

Class.	Kind of Business.	Total Amount Paid in.	Claims Paid.	Estimated Reserve on Approved Claims.	Balance in Fund.	No. of Deaths Ap- proved.
1	Sewers	\$11,183 90	\$3,500 60		\$7,683 30	
2	Bridge and Tower	12,145 14	2,208 90		6,379 64	1
3	Pile Driving	4,781 76	580 85	\$3,556 60	4,200 91	
4	House Wrecking	1,716 54	208 50		1,508 04	
5	General Construction	49,006 90	9,123 31	15,544 20	24,339 39	4
6	Power Line Installation	34,380 43	6,018 31	1,321 78	27,640 34	2
7	Railroads	52,842 15	15,293 64	14,079 87	23,468 64	5
8	Street Grading	17,526 69	3,878 00		13,848 69	
9	Ship Building	5,077 88	1,066 20		4,011 68	
10	Lumbering, Milling, etc.	180,094 00	97,560 99	66,936 82	15,596 19	24
12	Dredging	3,774 63	1,483 80		2,290 83	
13	Electric Systems	9,373 21	2,549 08	4,605 34	2,218 79	2
14	Street Railway	26,617 83	3,455 53	1,326 00	21,836 30	1
15	Telephone and Telegraph	4,232 12	738 06	784 52	2,709 54	1
16	Coal Mining	81,962 42	22,494 26	24,718 23	34,749 93	9
17	Quarries	12,449 16	3,858 90	2,491 55	6,100 71	1
18	Smelters	4,898 52	2,919 50		1,979 02	
19	Gas Works	6,389 97	465 41	2,963 83	3,460 73	1
20	Steam Boats	493 67	375 00		118 67	
21	Grain Elevators	8,270 65	3,115 16		5,155 49	
22	Laundries	7,544 70	1,469 10		6,075 60	
23	Water Works	2,492 08	2,250 40		2,241 68	
24	Paper Mills	5,366 61	2,861 65		2,504 96	1
25	Garbage Works	973 83	334 90		638 93	
29	Wood Working	18,992 31	9,809 32		9,182 99	
30	Asphalt Manufacturing	768 81			768 81	
31	Cement Manufacturing	6,907 27	1,263 33	902 08	4,741 86	2
33	Fish Canneries	11,041 98	1,199 40		9,842 58	
34	Steel Manufacturing Foundries	16,529 58	9,014 05	3,211 37	4,304 16	1
35	Brick Manufacturing	5,613 74	601 95		5,011 79	
37	Breweries	5,715 78	1,335 98	3,391 17	988 63	1
38	Textile Manufacturing	3,474 18	515 50		2,958 68	
39	Food Stuffs	2,799 93	395 97		2,403 96	
40	Creameries	2,411 60	87 25		2,024 35	
41	Printing	6,464 72	717 35		5,747 37	
42	Longshoring	9,204 08	2,718 76		2,521 98	
43	Packing Houses	3,011 20	1,001 60	3,963 34	2,009 60	1
44	Ice Manufacturing	1,372 13	352 55		1,019 58	
45	Theatre Stage Employes	432 50			432 50	
46	Powder Works	301 90	1,518 95		*1,217 05	
46	Creosoting Works	628 16	18 15		610 01	
47	Non-Hazardous Elective	886 64	77 05		809 59	
	Totals	\$640,951 30	\$216,435 21	\$149,796 70	\$274,719 39	57
	*Overdraft.					

§ 164. **Statistical reports on the operation of the act.**—The Washington Industrial Insurance Commission have published Reviews of the first four, eight and twelve months' operation of their administration of the Washington law which give very important statistical results of the status of the forty-eight funds which have been created by the contributions made by the corresponding classes of employers and from which the injured workers have been paid and awarded their compensations. Their report for the first year's operation of the act is given in the following section. These statements are of very great importance, not only to lawyers, judges, economists and legislative agents of the State of Washington, but to those of States having on their statute books similar laws, or of States which contemplate the enactment of such laws.

§ 165. **Review of the first year's operation of act.**

**SUMMARY OF OPERATION.**

Firms listed and assessed.....	5,750
Employés listed and protected.....	130,000
Total accidents reported .....	11,896
Claims allowed .....	6,984
Disallowed, suspended and waived.....	2,256
In process of adjustment.....	953
Accident report incomplete.....	1,703
Paid into accident fund.....	\$980,445.75
Paid out on claims.....	\$445,527.51
Invested in interest-bearing reserves to guarantee pensions .....	243,984.95
Net balance in accident fund.....	290,933.29
Gross expense of commission.....	107,868.08
Total funds handled by commission.....	1,088,313.83
Expense of doing business.....	9.9 per cent.

When the act was under discussion in the legislature and, even after it had become effective, the statement was made repeatedly that no state commission, without the spur of profit, could administer the law without wasting thousands of dollars.

"No state," said the law's critics, "can do business as cheaply as a private company." And yet, where the private casualty com-

pany is spending over sixty per cent. to handle its business, the state is doing it for nine and nine-tenths per cent. The German Imperial system of compensation costs twelve and eight-tenths per cent. for administration.

### Million Dollar Accident Fund.

The preliminary audit for October, November and December, 1911, and its resulting assessments up to January, 1912, secured for the administration of the accident fund \$428,057.42. The re-audit and the resumption of active logging and mill operations in April increased the accident fund to \$640,951.30. A year's contributions have nearly touched the million mark, the gross amount collected up to midnight, September 30th, being \$980,445.75.

The gross year's result then is the sum of nearly one million dollars collected and \$689,512.16 paid out to injured workmen and invested in reserves to guarantee pensions.

Paid out directly to claimants without expense of litigation or serious cost to the state at large, \$445,527.21 which went to injured workmen and their dependents. To insure the payment of pensions, now being distributed monthly to the dependents of 121 injured workmen, the state treasurer has set aside \$243,984.95, now bearing interest at an average rate of  $5\frac{1}{4}$  per cent.

Under the casualty insurance system, \$600,000 was collected annually from the manufacturers of the state, less than \$100,000 found its way back to the injured workman. Today, with a quarter of a million invested in Washington bonds, school, county and municipal, permanently invested and assisting in the state's development, nearly a half million, net, has been paid from the accident fund to relieve the needs of injured workmen, their families and dependents.

### Pensioners Number 235.

Naturally, the pension roll of the Commission is increasing. From the one pensioner in October, 1911, with a monthly income of \$25.00, the roll has swelled to 235, with a monthly payroll of \$2,364.50.

Stated briefly, the death claims brought before the Commission are in process as follows:

Pensions awarded .....	121
Suspended and rejected .....	191
(No dependents)	
Under investigation .....	38
Incomplete .....	22
<hr/>	<hr/>
Total .....	282

Preliminary figures on 1,000 cases indicate that less than three per cent. of all accidents reported under the Workmen's Compensation Act show a liability that would be good for a verdict under the old law, consequently 97 per cent. of all the above cases would be probably uncompensated under the casualty system.

The monthly average of accidents has increased inevitably owing to the resumption of business and a better understanding of the law. In February, 1912, it was about eight hundred a month. In September of the same year, the total was nearly one thousand. 11,896 formal reports of accidents were received during the year.

### **Why Contractors Are Continuously Assessed.**

The chief auditor's statement of the condition of the accident fund at the end of one year's operation is interesting. In the first eight classes, continuous assessments have been made by the Commission. The reasons for these continuous assessments are set forth briefly as follows:

1. No class of the first eight has a balance that a series of fatal accidents would not reduce below a point of safety.

2. If assessments had not been continuous the small contractor might have escaped paying on his short-term contracts.

3. Accidents have been continuous and assessments would have been levied finally to pay accident-costs in any event, the difference being that the larger contractor, being well established and easily accessible, would have been compelled to carry the cost, not only of his own accidents, but also of those occurring on the work of the small contractor who might have escaped assessment.

4. The placing of competitors on the same plane for the purpose of bidding on contracts demands that every contractor shall be assessed on every job. If the rates are too high, the legislature can adjust them.

5. The general contractor is often listed in several classes; sometimes on big jobs, sometimes on small, sometimes idle; now on public work, secured by law; now on private work where the owner may be holden and subjected to loss. The only safe way seems to be continuous assessment until the fund reaches a figure where all can be relieved. In any case, the law provides a readjustment of accounts each year, so that the inequities or overpayments may be corrected.

6. The extreme hazard of all operations in the contractors' classes compels a wide margin of safety; hence the inflexible rulings aforesaid.

### **Legislative Remedy for "Casual Employment Problem."**

In this connection, the need is emphasized of legislation to cover the whole matter of casual employment. The farmer who



"lets a contract" for a barn, cattle shed or hog pen; the private person who builds himself a bungalow by day labor; the business man who puts up a grand stand, dancing pavillion or boat house; the rancher who "hires out" a land clearing job; the property owner who "hires help" to paint his hotel, block or apartment house; all of these operations are extremely difficult to list and assess. Practically never does the Commission hear of them except when an accident occurs; then both employer and employé hasten to contribute and demand compensation respectively.

In one typical case, the contribution of the employer, who was discovered only after a carpenter had lost his eye through a flying nail, was \$3.85, while the accident cost the employers of class 5 \$1,064.60.

Some penalty for concealment of payroll will doubtless be imposed by the next legislature.

#### **Lumbermen's Class at Flat Cost.**

In class 10, lumbering, logging, etc., the law permits a rate of \$2.50 per hundred dollars of payroll. A call was made on these industries for seven months' assessments, resulting in a fund of \$324,102.86, from which claims were paid to the amount of \$206,146.50, with \$117,366.32 invested in reserves. This class, with a net balance of only \$590.04 has been watched very closely for purposes of comparison. Fortunately, the size of the class and the condition of business makes it possible to replenish this fund at once by another call, which is now in progress. Meanwhile, the flat cost of compensation is apparent from the showing, the actual rate being \$1.46 per hundred dollars.

In Class 10, Accounts Receivable (uncollected premiums), amounted Oct. 1, to \$53,562. Accounts Payable, including reserves on 7 death claims and award vouchers mailed out but not yet signed or certified to the state auditor for warrants, aggregate practically the same amount.

Attention is frequently directed to the printing trade—Class 41, on which the law fixes a rate of \$1.50 per hundred. The preliminary assessment created a fund of \$6,519.19, only \$1,345.65 of which was required to pay accident-loss. The assessed rate was therefore thirty-eight cents per one hundred dollars, but the accidents only required a rate of seven cents per hundred dollars. Clearly this fund will be sufficient for many months to come.

#### **Low Insurance Cost to Employers.**

Classes 30, asphalt manufacturing, and 45, theater stage employés, have had no accidents charged against them, but their diminutive funds of \$971.50 and \$445.14 respectively would be swept

away by one serious accident. Other classes showing very small percentages of rate required to meet accident cost are as follows:

	Rate per \$100 Fixed by Law	Rates per \$100 Assessed	Rates per \$100 Neces- sary
Class 33, Fish Canneries -----	\$3.00	.75	.14
Class 35, Brick Manufacture -----	2.00	.50	.13
Class 38, Textile Manufactures -----	1.50	.38	.12
Class 39, Food Stuffs -----	1.50	.38	.09
Class 40, Creameries -----	1.50	.38	.05
Class 44, Ice Manufacturing -----	2.00	.50	.27
Class 47, Creosoting Works -----	2.50	.61	.18

The non-hazardous class, created under section 19 of the act, by which employers and employes may elect to come under the act, even though excluded by the nature of their work, is growing in favor. It provides mutual protection at a rate of \$1.35 per hundred dollars. The Commission collected three months' premium from these employers, \$1,092.30, at a rate of thirty-four cents per hundred dollars, but only \$83.95 was required for meeting the accident-loss, a necessary rate of only three cents per one hundred dollars.

Another class which shows a remarkable record of low accident-cost is 14, street railways. With a legal rate of \$3.00 per hundred dollars the Commission collected the statutory three months' contribution, rate seventy-five cents, with the result that only twenty-three cents per hundred dollars was required to compensate injured workmen in that class. The most liberal rulings were adopted in compensating accidents occurring in connection with street railways after full consultation with the street railway companies. Compensation was paid in cases where a conductor was beaten by a passenger, where a motorman was assaulted by a truck driver and even where a conductor was bitten by a dying dog run over by the car, yet the rate of twenty-three cents per hundred dollars carried all awards made by the Commission.

#### Hazardous Risks at Low Rate.

Coal mining, Class 16, one of the most hazardous industries in the state, secured a fund of \$82,398.83 by a six months' call, \$40,-816.61 of which was paid out for accidents, and \$28,041.23 invested in pension reserves. The legal rate is \$3.00 per hundred dollars, and the assessed rate \$1.50, the necessary rate \$1.23. The same thing applies to quarries, with a legal rate of \$4.00, assessed rate of \$1.33, and required rate of sixty-eight cents per hundred dollars.

Laundries, a class in which several employers deliberately became defaulters, the legal rate is \$2.00 per hundred dollars, but

three months' assessment, rate fifty cents per hundred dollars created a fund of \$7,671.21, out of which the accident-cost required \$2,542.90, a rate of only seventeen cents per hundred dollars.

### The Powder Mill Class.

Class 46, powder manufacturers, is still overdrawn, but the fund's condition, as it would have been with the proper contributions collected, is interesting:

10% of payrolls for Oct., Nov., Dec. ....	\$ 3,956.49
Shortage on January 1st.....	4,302.86
10% of payrolls for Jan. 1 to Oct. 1.....	11,811.99
<hr/> Total .....	<hr/> \$20,071.34
Less pension reserves and burial allowances.....	8,259.35
	<hr/> \$11,811.99
Penalty on Imperial Powder Company.....	1,297.16
(Employed two girls under lawful age)	
<hr/> Balance if paid.....	<hr/> \$13,109.15

A rate of five per cent. would have been sufficient to pay for the accidents in the powder mill class even with the Chehalis disaster victims fully compensated.

No rates are extended in the first eight classes, continuous assessment and the varied ratings in each class making comparison impracticable.

### Appeals.

Out of the awards, suspensions and rejections made on the twelve thousand accident reports, only twenty-one appeals have been taken to the courts. Of these, three were withdrawn and three tried. The remainder are still pending. Only one appeal is by an employer, three are by dependents and the remainder by the workmen themselves. One appeal involves jurisdiction over interstate commerce; one whether a minor's dependent parents can receive a pension for life. In only two cases permanent disabilities have been found by the jury, contrary to the Commission's judgment.

Suits aggregating forty-three in number have been instituted by the attorney general against defaulting employers to collect the premiums due from them to the Accident Fund. Of these forty-three cases, seventeen were settled before judgment, four were settled subsequent to judgment, while in seven of the cases judgments have been entered but not yet collected. One case was discontinued because the plant was not in operation after October 1, 1911. One other case was discontinued for the reason that the employer had no one in his employ subsequent to October 1, 1911. Thirteen of the forty-three cases are still pending.

**§ 166. Official state safety bulletin.**—The Industrial Insurance Commission of Washington, the State Bureau of Labor and the Governor of the State, August 1, 1912, inaugurated a campaign for the reduction of accidents by the circulation and posting of a safety bulletin in the following form:

**PREVENT ACCIDENTS!**

1. "Safety first—better cause a delay than an accident."
2. 10 per cent. of the men employed are being hurt—that's too many.
3. Every accident costs money—money should buy comforts, not be wasted on preventable pain.
4. Help to prevent accidents. It is a duty you owe yourself, your fellow workmen, your family, their families, the employer and the State.
5. "An accident that could have been prevented by a safety device is a disgrace to an employer. It shows either a lack of care or a lack of efficiency."—Don D. Lescoghier.
6. "The amount of sorrow and suffering that will be eliminated when safety work is taken up earnestly by our manufacturers is beyond the comprehension of those who have not given the subject careful thought."—Safety Secretary Young, Illinois Steel Co.
7. "Safety committees composed of the men, not the superintendents or foremen, but the men, are the best inspectors. They will find the danger points and suggest remedies, and then they will make the suggestions go because they are their own ideas."—Chairman Richards, Safety Committee, C. & N. W. Ry.
8. "In 1909 few competent authorities dared to assert that more than 50 per cent. of the industrial accidents were preventable. To-day we do not hesitate to say that 75 per cent. are preventable."—Minnesota Bureau of Labor.
9. Every injury, no matter how slight, should receive proper medical attention. Infection—blood poison—results from ignorance and neglect. Amputations often follow.
10. "Constant and close supervision by competent superintendents and foremen can prevent accidents in those operations (such as logging or gravel pit work) where safety devices cannot be utilized."—Director Van Schaack, Aetna Insurance Company.

**11. PERSONAL CAUSES OF ACCIDENTS.**

Minnesota Bureau of Labor Report, 1910—Employers' Opinions:

	Per
Inherent danger of industry (includes defective and insufficiently guarded machinery)-----	cent. 61

Contributory negligence of employé (want of skill and carelessness) -----	20.7
Inherent danger and contributory negligence combined -----	10.5
Negligence of injured employé -----	3.6
Negligence of fellow workman -----	3.1
Fellow workman and injured employé combined -----	1.0
Employer -----	.1
<hr/>	
Total (4,084 cases) -----	100

12. Every accident has its inevitable and definite effect upon the cost of production under the present Compensation Act. The Commission has the power and has already fixed penal rates upon establishments because of poor or careless management or work unduly dangerous. The workman's instinct of self-preservation should be supplemented by the wrath of his foreman when he is careless of the safety of his fellow workers.

#### INSTRUCTIONS.

Do not take off any safeguard or protective device. If you take a chance and get hurt, it decreases your compensation 10 per cent. (Sec. 9, Compensation Act.) If the superintendent, foreman, or any other person removes any safeguard, report the fact to this Commission.

Do not hesitate to lend a hand when anyone is hurt. Call any doctor desired. Compensation is paid, regardless of whose fault causes the injury. Give the Commission the full facts fearlessly. Concealment of causes helps no one.

The State compels employers to provide funds out of which it pays reasonable compensation in case of injury.

The State compels employers to provide funds out of which it pays reasonable compensation in case of injury. If you do not think the awards sufficient, remember it is better than law suits and delays under the old system, and where 80 out of each 100 injured had no legal remedy whatever.

There is no fund or provision, however, for payment by the State of charges for ambulance, physician, surgeon, hospital, nurse, medicine, or surgical appliances. The "first-aid" provision was stricken from the Compensation Act before its passage by the legislature.

Much needless infection and time-loss should be prevented by the employers keeping handy a supply of antiseptic gauze, sterilized bandages (keep free from dust or handling) and tincture of iodine. Paint all small wounds, bandage, then send man to doctor.

When an accident happens the following papers should be filled out and mailed at once to Olympia:

1. The employer's report, Form (k) (green).

2. Workman's claim for compensation, Form (l) (white).
3. Report of attending physician, Form (m) (pink).
4. Report of witnesses, Form (o) (buff).

The employer should keep these blanks on hand. They are furnished free by the State. Unless the injury causes the loss of over one day's time, or results in a disability that impairs the earning capacity 5 per cent., no award will be made by the Commission.

Industrial Insurance Commission of Washington.

By J. H. Wallace,  
Hamilton Higday,  
Commissioners.

## CHAPTER XI.

### THE OHIO WORKMEN'S INSURANCE ACT.

- | Sec.  | Sec.  |
|---|---|
| 167. The nature of the Ohio Workmen's Insurance act.  | 182. Form of procedure on notices in general.   |
| 168. Ohio act an insurance act.   | 183. Form of first notice of injury. (a)  |
| 169. Ohio act an indirectly compulsory act.   | 184. Form of first notice of death. (b)   |
| 170. Employer's liability under the act.  | 185. Formal procedure for procuring medical, nurse, and hospital services and medicines, without compensation.              |
| 171. The statute and its interpretation by the board and the attorney-general.                                | 186. Form of application for money to pay for medical, nurse and hospital services and medicines, without compensation. (a) |
| 172. The decision of the Supreme Court of Ohio sustaining the law.  | 187. Form of physician's fee bill. (b)  |
| 173. Workshop and factory inspection and regulation act.  | 188. Form of druggist's cost bill. (c)  |
| 174. Rules of procedure before the state liability board of awards.   | 189. Form of employer's certificate and oath. (d)   |
| 175. Procedure as to employers.   | 190. Form of certificate and oath of lay witness. (e)   |
| 176. Forms of applications and notices to be used by employers covered by the act.                            | 191. Formal procedure to obtain money to pay for medical, nurse and hospital services and medicines, with compensation.     |
| 177. Form of application for classification of industry and for premium.                                      | 192. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)    |
| 178. Form of supplementary report—Accident experience.  | 193. Form of employer's certificate and oath. (b)   |
| 179. Form of notice of employer to employés.  | 194. Form of physician's fee bill. (c)  |
| 180. A comparison of premium rates under the Ohio law with liability insurance rates under compensation laws. |   |
| 181. Procedure as to injured employés.  |   |

- |   |   |
|---|---|
| <p>Sec.</p> <p>195. Form of druggist's cost bill. (d)</p> <p>196. Form of medical fee bill and hospital charges. (e)</p> <p>197. Form of certificate and oath of lay witness. (f)</p> <p>198. Formal procedure to obtain compensation in case of permanent total disability.</p> <p>199. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)</p> <p>200. Form of employer's certificate and oath. (b)</p> <p>201. Form of physician's fee bill. (c)</p> <p>202. Form of druggist's cost bill. (d)</p> <p>203. Form of medical fee bill and hospital charges. (e)</p> <p>204. Form of certificate and oath of lay witness. (f)</p> <p>205. Forms to obtain money to pay for medical, hospital and funeral expenses only.</p> <p>206. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses, without award. (a)</p> <p>207. Form of undertaker's certificate of death and cost bill. (b)</p> <p>208. Form of lay witness's certificate in proof of death. (c)</p> <p>209. Form of physician's certificate in proof of death. (d)</p> | <p>Sec.</p> <p>210. Form of employer's certificate and oath. (e)</p> <p>211. Form of physician's fee bill. (f)</p> <p>212. Form of druggist's cost bill. (g)</p> <p>213. Form of medical fee bill and hospital charges. (h)</p> <p>214. Form of certificate and oath of lay witness. (i)</p> <p>215. Form of procedure to obtain compensation and money to pay for medical, hospital and funeral expenses.</p> <p>216. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses. (a)</p> <p>217. Form of proof of dependents. (b)</p> <p>218. Form of undertaker's certificate of death and cost bill. (c)</p> <p>219. Form of lay witness's certificate in proof of death. (d)</p> <p>220. Form of physician's certificate in proof of death. (e)</p> <p>221. Form of employer's certificate and oath. (f)</p> <p>222. Form of physician's fee bill. (g)</p> <p>223. Form of druggist's cost bill. (h)</p> <p>224. Form of medical fee bill and hospital charges. (i)</p> <p>225. Form of certificate and oath of lay witness. (j)</p> |
|---|---|

§ 167. The nature of the Ohio Workmen's Insurance act.—The distinction between Workmen's Insurance and Compensation Acts has been pointed out in



Chapter I. It is sometimes loosely said that statutes of the nature of the British Workmen's Compensation Act have been enacted in California, Illinois, Kansas, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Washington and Wisconsin, but this statement is too broad. The Workmen's Insurance Acts of Ohio, Washington and even of Massachusetts, are specific adaptations of the German Industrial Insurance Law and the legal basis for these three acts is found in the taxing power of the State exercised through its police power for the protection of the health, safety and the general welfare of the public. The Compensation Acts of the nine other States mentioned are adaptations of the British Workmen's Compensation Acts and in no way depend upon the taxing power of the States. The basis of the two kinds of acts are fundamentally different under our constitutional limitations.

§ 168. **Ohio act an insurance act.**—The Ohio Act is in fact a workman's Insurance Act, for the reason that it makes the claim of the injured workman a claim against a fund and not against his employer, as is the case in the so-called workman's compensation laws. There are only two exceptions of very rare occurrence to this statement. The first is that in which the State Liability Board of Awards denies the injured workman any relief whatever, and in that case his right to sue the Board of Awards is preserved, but he is denied the right to sue his employer.<sup>1</sup> His action is against the board. The second exception occurs where a personal injury is suffered or when death results to an employé from personal injuries which have "arisen from the willful act of such employer or any such employer's officers or agents from the failure of such employer, or of any of such employers' officers or agents, to comply

<sup>1</sup> See § 36 of Act.

with any municipal ordinance or lawful order of any duly authorized officer, or any statute for the protection of life or safety of employés." This is the only case in which is retained the right of the employé to sue his employer who has paid the premium prescribed by the Board of Awards. An injured employé, however, who files a suit on such a claim by that act waives any claim to compensation from the fund created by the act.<sup>2</sup> The rarity of such an occurrence is shown by reference to the operation of the British Compensation Act. The actual figures of an English insurance company for one year (1908) show that out of 10,343 accidents there were only fifty-five employers' liability claims.<sup>3</sup> This showing is made stronger when it is understood that under the British Compensation Act, an injured employé may elect to sue at law or accept compensation given by the act, and his election to sue does not deny him the right to compensation under the Compensation Act, in case the suit at law should fail. Under the Ohio act, however, the moment the employé files his suit he stakes all his chances on winning his suit and waives any claim against the fund, and he has more to prove than in ordinary suits at law previous to the passage of the act.

**§ 169. Ohio act an indirectly compulsory act.—**When the employer has paid the premium and posted the notice required by the act<sup>3a</sup> and the workman continues in the service of such an employer and is injured he is compelled to accept the compensations provided by the act, excepting the rare case cited in the preceding section. The act is in fact compulsory on the part of the employé.

<sup>2</sup> See § 21-2 of Act.

<sup>3</sup> See Senate Document No. 338, 62d Congress, 2d Session, p. 103, Report of the Employer's Liability and Workmen's Commission of the United States. Feb. 21st, 1912.

These results are strongly supported by the experience under the Washington Act. See review of eight months operation by the Industrial Insurance Commission of Washington; ante § 166.

<sup>3a</sup> See §§ 20-1.

A color of option on the part of the employer is found in section 20-1 of the Ohio Act. In the first line the word "any" was inserted in the place of "every," and in the third line the word "who" was inserted before the words "shall pay, etc.," by the opponents of the mandatory form of the original draft of the law. The penalty, however, for the failure to pay the premiums prescribed by the law, namely, the taking away of all of the common-law defenses from the employer, remains in the law, and is the same penalty recommended by the Employer's Liability Commission of Ohio when the draft of the law was in the mandatory form. The law in effect is mandatory.

**§ 170. Employers' liability under the act.**—Briefly stated, the law is that the employer who employs five or more workmen or operatives regularly in the same business is relieved from all liability for injuries in course of employment where he pays into the State insurance fund the premiums fixed by the State Liability Board of Awards. The exception is in the case of injuries wilfully inflicted by the employer. Where the premiums are not paid the employer is liable as under the common law, except that he is denied the common-law defenses.

**§ 171. The statute and its interpretation by the board and the attorney-general.**—The Ohio Act is entitled an act to create a State insurance fund for the benefit of injured, and the dependents of killed employés, and to provide for the administration of such fund by a State liability board of awards, and reads as follows:

Sec. 1. There is hereby created a State liability board of awards, to be composed of three members, not more than two of whom shall belong to the same political party, to be appointed by the governor, within thirty days after the passage of this act, one of which members shall be appointed for the term of two years,

one member for four years and one member for six years, and thereafter as their terms expire the governor shall appoint one member for the term of six years. Vacancies shall be filled by appointment by the governor for the unexpired term.

**Note by the board.**—In obedience to the provisions of this section, Governor Harmon, on July 14, 1911, appointed as members of the State Liability Board of Awards, Mr. T. J. Duffy, of East Liverpool, Democrat, for a term of two years; Mr. William A. Grieves, of Columbus, Republican, for a term of four years; and Mr. Wallace D. Yaple, of Chillicothe, Democrat, for a term of six years. On July 25, 1911, Mr. Grieves resigned and on August 24, 1911, the Governor appointed Mr. Morris Woodhull, of Dayton, to fill the vacancy thus created. Mr. Duffy has for some years been President of the National Potters' Association; Mr. Woodhull is a manufacturer; and Mr. Yaple is a lawyer.

Sec. 2. Each member of the board shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duty as such member, or serve on or under any committee of any political party.

**Note by the board.**—Each member of the board upon his appointment promptly complied with the requirements of this section.

Sec. 3. Each member of the board shall receive an annual salary of five thousand dollars, payable in the same manner as salaries of State officers are paid.

Sec. 4. The board shall be in continuous session and open for the transaction of business during all the business hours of each and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its records. All proceedings of the board shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered, and the award made with respect thereto, and all voting shall be had by the calling

of each member's name by the secretary and each vote shall be recorded as cast.

**Note by the board.**—See note to Section 6.

**Sec. 5.** A majority of the board shall constitute a quorum for the transaction of business, and a vacancy shall not impair the right of the remaining members to exercise all the powers of the full board so long as a majority remains. Any investigations, inquiry or hearing which the board is authorized to hold, or undertake, may be held or undertaken by or before any one member of the board. All investigations, inquiries, hearings and decisions of the board, and every order made by a member thereof, when approved and confirmed by a majority of the members, and so shown on its record of proceedings, shall be deemed to be the order of the board.

**Note by the board.**—See note to Section 6.

**Sec. 6.** The board shall keep and maintain its office in the city of Columbus, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals and maps. All necessary expenses shall be audited and paid out of the State treasury. The board may hold sessions at any place within the State.

**Note by the board.**—The Board is maintaining offices on the sixth floor of the Hartman Building, corner of State and Third Streets, Columbus, Ohio.

Daily sessions of the Board are held, and all sessions are open to the public. The proceedings of the Board are recorded in its minutes, and in addition, a separate system of records is maintained in the claims department, which department is in charge of the Chief Clerk.

**Sec. 7.** The board may employ a secretary, actuary, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants, and fix their compensation. Such employments and compensations shall be first approved by the governor, and shall be paid out of the State treasury. The members of the board, ac-

tuaries, accountants, inspectors, examiners, experts, clerks, stenographers and other assistants that may be employed shall be entitled to receive from the State treasury their actual and necessary expenses while traveling in the business of the board. Such expenses shall be itemized and sworn to by the person who incurred the expense, and allowed by the board.

**Note by the board.**—The law requires the State to pay the entire cost of administration of the state insurance fund, leaving the whole amount paid into such fund by the employers and employes to be devoted to the payment of awards for injuries.

For convenience and the proper systemization of the work of the Board, the following departments have been established:—

An Auditing Department, which has charge of all accounts; and Actuarial Department, which has charge of classifications and rate making under general rules adopted by the Board; a Clerical Department, with which all claims for compensation are first filed and records of claims kept; an Inspection Department, the duties of which will be to make investigations of injuries, both before and after the awards of compensation, the jurisdiction of the Board being a continuing one; and, a Medical Department, consisting of a Chief Medical Examiner, who devotes his entire time to the Board, and such local medical examiners as it will be found necessary to appoint. The duty of the Chief Medical Examiner will be to examine all physician's certificates filed in the claim department and to require examinations to be made by local medical examiners in all cases in which it may seem advisable.

**Sec. 8.** The board shall adopt reasonable and proper rules to govern its procedure, regulate and provide for the kind and character of notices, and the services thereof, in cases of accidents and injury to employes, the nature and extent of the proofs and evidence and the method of taking and furnishing the same, to establish the right to benefits of compensation from the State insurance fund, hereinafter provided for, the forms of application of those claiming to be entitled to benefits or compensation therefrom, the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

Sec. 9. Every employer shall furnish the board, upon request, all information required by it to carry out the purposes of this act. The board or any member thereof or any person employed by the board for that purpose, shall have the right to examine under oath any employer or officer, agent or employé thereof.

**Note by the board.**—See note to Section 12.

Sec. 10. Every employer receiving from the board any blank with directions to fill the same, shall cause the same to be properly filled out as to answer fully and correctly all questions therein propounded, and if unable to do so shall give good and sufficient reasons for such failure. Answers to such questions shall be verified under oath and returned to the board within the period fixed by the board for such return.

**Note by the board.**—See note to Section 12.

Sec. 11. Each member of the board, the secretary and every inspector or examiner appointed by the board shall, for the purposes contemplated by this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

Sec. 12. In case of disobedience of any person to comply with the order of the board, or subpoena issued by it or one of its inspectors, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or refuse to permit an inspection as aforesaid, the probate judge of the county in which the person resides, on application of any member of the board, or any inspector or examiner appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoenas issued from such court on a refusal to testify therein.

**Note by the board.**—Sections 9, 10 and 12 are construed to

apply to all employers coming within the purview of the act, whether subscribers to the State Insurance Fund or not. However, it is not the intention of the Board to exercise the powers conferred on it by these sections except in extreme cases. It is earnestly desired that the provisions of these sections be strictly observed by employers, as such observance will be of great assistance to the Board in its work.

Sec. 13. Each officer who serves such subpoenas shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the board or an inspector or examiner, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid from the State treasury in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by any two members of the board. No witness subpoenaed at the instance of a party other than the board or an inspector shall be entitled to compensation from the State treasury unless the board shall certify that his testimony was material to the matter investigated.

Sec. 14. In an investigation, the board may cause depositions of witnesses residing within or without the State to be taken in the manner prescribed by the law for like depositions in civil actions in the court of common pleas.

Sec. 15. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, by a stenographer appointed by the board, being certified by such stenographer to be a true and correct transcript of the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and subscribed, may be received in evidence by the board with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such tran-



script shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcript in courts of common pleas.

**Sec. 16.** The board shall prepare and furnish blank forms, and provide in its rules for their distribution so that the same may be readily available, of application for benefits or compensation from the State insurance fund, notices to employers, proofs of injury or death, of medical attendance, of employment and wage earnings, and such other blanks as may be deemed proper and advisable, and it shall be the duty of insured employers to constantly keep on hand sufficient supply of such blanks.

**Note by the board.**—All blanks and forms prescribed by law or necessary in the judgment of the board for the administration of the law have been prepared and will be furnished free of cost to all employers and employes electing to operate under the law.

**Sec. 17.** The State liability board of awards shall classify employments with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total pay roll and number of employes in each of said classes of employment, sufficiently large to provide an adequate fund for the compensations provided for in this act, and to create a surplus sufficiently large to guarantee a State insurance fund from year to year.

**Note by the board.**—The duty enjoined upon the Board by the foregoing section is one of the most important contained in the law, for the object would seem to be to require the Board to so classify employments and construct its rates as to create a fund sufficiently large during a given period to provide compensation for all injuries and deaths occurring in that period, although payments from the fund may continue over a period of six years. After giving much consideration to the subject, the Board, on February 29th, 1912, adopted a resolution prescribing a general rule of classification, in pursuance of which rates have been fixed for each class. Every establishment or plant in the state will fall automatically into one of the classes established under this rule. The resolution is as follows:

"Be it Resolved, that in accordance with the provisions of Section 17 of the act entitled, 'An Act to create a state insurance fund for the benefit of injured, and the dependents of killed employés, and to provide for the administration of such fund by a state liability board of awards,' (102 O. L., 524), that all employments are hereby classified with respect to their degree of hazard and the risks of the same; and that rates of premium of the risks of the same, based upon the total pay roll and number of employés in each of said classes of employment, for each six months period be fixed in accordance with the following tables, each of said employments being divided into five classes on the following basis, viz.:

Class 1. Employments having 10 or less accidents per \$100,000.00 of pay roll, and having no neath nor permanent disability.

Class 2. Employments having over 10 and not more than 40 accidents per \$100,000.00 of pay roll, and having no death nor permanent total disability.

Class 3. Employments having over 40 and not more than 100 accidents per \$100,000.00 of pay roll, and having no death nor permanent total disability.

Class 4. Employments having more than 100 and not over 200 accidents per \$100,000.00 of pay roll, including one death or permanent total disability.

Class 5. Employments having more than 200 accidents per \$100,000.00 of pay roll, or more than one death or permanent total disability.

To each of said classes add 3.4% of the total pay roll for each additional death or permanent total disability per each \$100,000.00 of pay roll; said classification and rates to be effective until further action of the Board.

Accidents referred to above are the same as injuries required by law to be reported to the State Departments."

Under the plan of classification and rating established by this resolution, employers in any line of industry have it in their power by so conducting their business as to eliminate accidents, to gradually reduce not only their own individual rates, but the rates applicable to the class to which they belong, thus providing for themselves and their employés protection at less cost and fulfilling one of the purposes of such legislation, viz., reducing accidents to a minimum.

**The author's construction.**—The intent of this section is to group or classify employments into classes "with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premiums of the same," and it is the opinion of the author that the language quoted means that all employers engaged in the same business (brewing for example) should pay the same rate

of premium on the payroll. Under the Washington act the employments are grouped into different classes according to their individual hazard and a uniform rate is imposed. This classification in intent responds to the intent with which the author drafted said section 17. This section is an exact copy of paragraph (b), § 30, page LXXV, part I, Report of the Employers' Liability Commission of Ohio.

In Ohio all employers who are engaged in the brewing business should pay the same rate. Under the construction placed upon this section by the State Liability Board of Awards five different rates might be made to the brewers of Ohio, depending upon individual experience of the employer. This board has in fact not classified employment at all but has classified employers into five classes according to each employer's individual experience.

The economic basis, in one important particular, and there are many others, for putting all employers who conduct the same kind of business or employment and all employments which carry the same hazard in the same group as to hazard and rate of premium, is, that there is an association of brewers, for example, and a union of brewery workers and that improvements in the manufacture of beer, prevention of accidents, improvements in the welfare of the employes, are best worked out through the association of the brewers and the union of workmen.

Sec. 18. The state liability board of awards shall establish a State insurance fund from premiums paid thereto by employers and employes as herein provided, according to the rates of risk in the classes established by it, as herein provided, for the benefit of employes of employers that have paid the premium applicable to the classes to which they belong and for the benefit of the dependents of such employes, and shall adopt rules and regulations with respect to the collection, maintenance and disbursement of said fund.

**Note by the board.**—In pursuance of authority conferred by the above section, the following plan has been adopted for the collection of premiums:

Employers desiring to ascertain the cost of insurance are required to file with the Board an application on a form furnished by the Board, which application, among other things, sets forth the nature of the business conducted, its location, the number of workmen or operatives employed, the kinds of employment, and the estimated pay roll for the ensuing six months. This application is sworn to by the applicant, or if a corporation, by one of its officers. The application is examined by the Auditing Department, and if found to be in correct form, is transferred to the Actuarial Department, where the business of the applicant is properly classified and

given the rate to which such class is entitled by application of the rule outlined in the resolution referred to in the note to Section 17. The applicant is then advised by mail as to the classification of his employment and the rate per \$100 of pay roll. The applicant then determines whether he desires to elect to operate under the law. If so, he requests the Auditing Department to forward him a "Pay-In-Order," which is the authority for the Treasurer of State to accept the premium. The applicant then forwards the Pay-in-Order, with the amount of money called for by the same, directly to the Treasurer of State, who receives the same, mails a receipt to the applicant, and notifies our Auditing Department. The Auditing Department then forwards to the applicant a certificate, certifying under seal of the Board the fact that the premium has been paid into the state Treasury, and that the applicant will be protected by the law for the period of six months from and after the first week day following the receipt of the premium by the State Treasurer. At the same time the applicant is forwarded proper notices to post about his factory or plant, or premises where his work is carried on, and also forms of notice to be used by his injured employes who expect to file their claims for compensation with the Board.

The method of passing on claims and making awards is outlined in the rules adopted by the Board, as contained in the Appendix. Disbursement of the fund will be made upon orders signed by at least two members of the State Liability Board of Awards, directed to the Treasurer of the State of Ohio, and payable to the injured person, or in the event of his death, to his dependents (See Section 19.)

Sec. 19. The treasurer of State shall be the custodian of the State insurance fund, and all disbursement therefrom shall be paid by him, but upon vouchers signed by any two members of the State liability board of awards.

**Note by the board.**—No specific provision is made in this section for the investment of the State Insurance Fund, or placing the same at interest, as is required to be done with state funds, but State Treasurer Creamer has followed the direction of the law respecting the deposit of state funds, and now has the State Insurance Fund deposited in various banking institutions, and the same is drawing interest on monthly balances in the same manner as the funds of the state.

Sec. 20. The treasurer of state shall give a separate and additional bond, in such amount as may be fixed by the governor, and with sureties to his approval, conditioned for the faithful performance of his duties as custodian of the state insurance fund herein provided for.

Section 20-1. Any employer who employs five or more workmen or operatives regularly in the same business, or in or about the same establishment who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employé, wherever occurring, during the period covered by such premiums, provided the injured employé has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice, shall be deemed a waiver by the employé of his right of action as aforesaid.

Each employer paying the premiums provided by this act into the state insurance fund shall post in conspicuous places, about his place or places of business, typewritten or printed notices stating the fact that he has made such payment; and the same, when so posted, shall constitute sufficient notice to his employés of the fact that he has made such payment; and of any subsequent payments he may make after such notices have been posted.

**Note by the board.**—(A) This section and succeeding sections (See Sections 20-2, 21-1 and 21-2) have the effect of dividing employers into two general classes, viz.:—

1. Those who employ less than five workmen or operatives regularly in the same business.
2. Those who employ more than five workmen or operatives regularly in the same business.

In other words, this act operates only on those employers employing five or more workmen or operatives, and those who employ a less number are subject to the liability law in force at the time of the going into effect of this act.

Under this act the employers of the second class above enumerated may, by choice or by willful act or negligence, come within any one of three classes:—

1. Employers who employ five or more workmen or operatives regularly in the same business who pay into the state insurance fund the premiums prescribed by the State Liability Board of Awards and who observe the provisions of municipal and state laws

relative to the protection of the life or safety of employés, and who do not willfully injure any employé or employés. Such employers are not liable to respond in damages by civil action for any injury occurring to any employé in the course of his employment, but the employé must resort wholly to the state insurance fund.

2. Employers who employ five or more employés or operatives regularly in the same business, who do not elect to pay the premiums provided for under this act. The employés of such employers, in case of injury, have no claim upon the state insurance fund, their only recourse being a civil action for damages brought in a court of proper jurisdiction. In such actions, the employers are not permitted to avail themselves of the common law defenses enumerated in this act.

3. Employers who employ more than five workmen or operatives regularly in the same business and who pay into the state insurance fund the premiums fixed by the State Liability Board of Awards, but who willfully inflict injury upon their employés or who disregard municipal or state regulations for the safety of their employés. The employés of such employers, in case of injury, have the option of either maintaining a civil action for damages, or filing a claim with the State Liability Board of Awards for an award from the state insurance fund. Having once exercised their option, however, their decision is final, and they must abide by the result. (See Sections 21-1 and 21-2.)

(B) The words "workmen or operatives" are construed to include all employés employed in the same business, or in or about the same establishment, to whom compensation of any nature is paid, excepting the officers of a corporation, as such, and persons wholly engaged as traveling salesmen. (Opinion of Attorney-General Hogan, April , 1912). The only part of the total pay roll to be excluded in the calculation of the premium is the compensation paid to the officers of a corporation, as such, and traveling salesmen. All others are included. Of course, if an officer of a corporation is also employed as a workman or operative in any capacity in the business, other than traveling salesman, his pay roll, as such workman or operative, should be included also.

(C) A liberal construction is given the word "regularly," as used in the above section. It is not construed to mean continuously. If an employer employs five or more workmen or operatives in the business which he is conducting during such portions of the year as conditions permit of the carrying on of the business in which he is engaged, he and his employés are subject to the provisions of the law. (Opinion of Attorney General of March 9th, 1912.)

(D) The words "wherever occurring," as used in the above section, and "wheresoever such injury has occurred," as used in Section 21, should be construed together and considered in connec-

tion with the expression "employés in this state," as used in Section 20-2, so that the employé of an Ohio employer whose contract of employment was made in Ohio is entitled to participate in the State Insurance Fund to which his employer has contributed, in the event of his injury in the course of his employment anywhere within or without the territorial limits of Ohio; and the employer is equally protected from action at law by his injured employé whether the injury occurred within or without the territorial limits of Ohio. (Opinion of Attorney-General Hogan, January 4, 1912.)

(E) The method to be followed by the employer in making his election to pay the premiums provided by this act into the State Insurance Fund has been outlined elsewhere. (See note to Section 18.)

(F) The election of the employé is made by his remaining in the service of his employer with notice that his employer has paid into the State Insurance Fund the premiums provided by law, and his continuation in the service of his employer after such notice deprives him of the right to maintain an action in court, except in the special cases defined in Section 21-2. The posting of the notices prescribed in this section by the employer shall constitute sufficient notice to the employé of the fact that such payment has been made, and the continuance of the employé in the service thereafter, in effect constitutes an implied contract between employer and employé to the effect that the employé will resort to the State Insurance Fund only for compensation in case of injury. (Opinion of Attorney-General Hogan, April 4, 1912.)

(G) There is no distinction between "minors" and "adults" in the manner of election. All employés elect in the same manner regardless of whether they are minors or adults, and minors are dealt with by the Board in all respects in the same manner as adults.

Sec. 20-2. For the purpose of creating such state insurance fund, each employer who employs five or more workmen or operatives regularly in the same business, or in or about the same establishment, and his employés in this state, having elected to accept the provisions of this act, shall pay, on or before January 1, 1912, and semi-annually thereafter, the premiums of liability risk in the classes of employment as may be determined and published by the state liability board of awards. The said employers for themselves and their employés shall make such payments to the state treasurer of Ohio, who shall receive and place the same to the credit of such

state insurance fund. The premiums provided for in this act shall be paid by the employer and employés in the following proportions, to-wit: Ninety per cent. of the premium shall be paid by the employer and ten per cent. by the employés. Each employer is authorized to deduct from the pay roll of his employés ten per cent. of the said premiums for any premium period in proportion to the pay roll of such employés; no deduction shall be made except for that portion of the premium period antedating such pay roll. Each employer shall give a receipt to each employé showing the amount which has been deducted and paid into the state insurance fund.

**Note by the board.**—(A) The plan devised by this law contemplates that the employer will have paid into the State Insurance Fund on or before January 1, 1912, the amount prescribed by the Board, and thereafter, within the period of time covered by such payment, all accidents occurring to employés of such employers as have contributed to such fund, except as provided by Section 21-2, shall be compensated out of such fund exclusively. The amount paid by each employer will be determined by the classification of the industry in which he is engaged, the number of men employed, the estimated pay roll for the succeeding six months and the rate fixed by the Board for such particular class; and the employer is then given the right to deduct from the wages of his employés such weekly or monthly amounts as in the six months period will aggregate 10% of the amount so paid by the employer into the State Insurance Fund. Receipts and forms will be furnished employers by the Board.

(B) The date, January 1, 1912, fixed in the foregoing section as the time for the going into effect of the act, is directory and not mandatory. Therefore, the act did not go into full operation until the rates of insurance were "determined and published" by the Board, which was done on February 29th, 1912. (See note to Section 17.) As no employer could have availed himself of the provisions of the law until March 1, 1912, it is clear that he could not be deprived of the common-law defenses in any action brought by an employé for an injury occurring at any time prior to that date. (Opinion of Attorney-General Hogan, January 8, 1912.)

(C) This section provides that the employer who has elected to accept the provisions of this act shall pay the premiums of liability risk in the classes of employment as may be "determined and published" by the State Liability Board of Awards. The method of publication is not prescribed by the law. In an opinion



rendered to the Board by Attorney-General Hogan on March 6th, 1912, it is held that it is not necessary to make such publication in a newspaper, and that sufficient publication has been made if it is made known through the press that the Board has established its rates, and that the same may be had upon application. The Attorney-General, in his opinion, also suggests that it would be a proper means of publication to have the classifications and rates published in a rate book for distribution, and this is now being done.

(D) Frequent inquiry is made of the Board as to whether the employer is required by law to collect from his employés ten per cent. of the premium paid by him into the State Insurance Fund. The employer is given the right to collect the ten per cent. from his employés, but may waive that right if he so desires, as the collection of the ten per cent. is no part of the election of the employé to accept the provisions of the act. The employé's election is made irrevocably when he continues in his employment after the posting of the notices required in Section 20-1.

(E) The words "employés in this state," as used in this section, should be construed to mean employés whose contracts of service are made in this state. If the contract of service is made in Ohio, it matters not where the injury has occurred, providing it was sustained in the course of employment. (See Section 20-1, Note (D).)

(F) The inquiry is frequently made as to how an employer who once elects to become a subscriber to the State Insurance Fund shall proceed in the event he desires to no longer contribute. The first contribution made to the fund protects the employer and provides compensation for his employés for the period of six months from the day following the date of the contribution. Protection ceases at the end of the six-months period, and unless the employer continues to make his payments, he is automatically dropped. In other words, the employer goes out of the protection of the law by simply failing to make his payments.

(G) The Board is frequently asked whether a principal who sub-lets work to an independent contractor should subscribe to the fund in order to be protected from injuries occurring to the employés of the independent contractor. The subject of "independent contractor" is in itself a branch of the law which could be made the subject of an extensive treatise, and we shall content ourselves by stating that the Workmen's Compensation Law has in no wise changed the law as to independent contractors. In other words, if the principal would, under the general law governing this subject, be liable for injuries resulting to the employés of independent contractors, it would be necessary for him to subscribe to the State Insurance Fund in order to be protected; otherwise, not. A clear

case of the non-liability of the principal would be where the employer employs workmen who do what is generally known as "piece work," the employés working in shops or rooms which they provide for themselves, or at their homes, and not under the supervision or control in any way of the employer. Neither such employés who contract directly with the principal to do such piece work, nor any persons they might employ to assist them would come under the terms of the act, and neither would have a claim on the principal in case of injury. (Opinion of Attorney-General Hogan, March 8, 1912.) A different rule would apply, however, in cases where the principal furnishes the place to work, the machinery and tools with which to work and the materials from which the finished product is made, and retains a general supervision over the conduct of the workmen. In such instance, we believe that the principal owes a duty to furnish a safe place in which to work, safe machinery, etc., and that he would be liable for any injury occurring to the employés of the independent contractor occasioned by negligence of the principal or any of his officers, agents or employés, either in furnishing a safe place in which to work or in furnishing proper machinery, tools, etc., and so in order to be protected should be a subscriber to the fund.

(H) The manner of the election of the employé has already been described. (See note (F) under Section 20-1.)

(I) The ten per cent. which the employer is authorized by this section to collect from his employés is not ten per cent. of the employés' wages, but ten per cent. of the amount of the premium paid by the employer. This seems to be so clear as to require no explanation, but we find many persons have the erroneous opinion that it is ten per cent. of the employé's wages that the employer is entitled to retain. To illustrate, if the rate of premium charged the employer is \$1.00 per \$100.00 of wages paid, the employer would have the right to collect from his employés 10 cents for each \$1.00 of premium paid, i. e., 10 cents for each \$100.00 of wages paid the employés which would be one-tenth of one per cent. of the employés' wages, or for an employe earning \$10.00 per week, the amount to be deducted from his wages would be just one cent per week.

Sec. 21. The state liability board of awards shall disburse the state insurance fund to such employés of employers as have paid into said fund the premiums applicable to the classes to which they belong, that have been injured in the course of their employment, where-soever such injury has occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued.

**Note by the board.**—By the provisions of this section, the State Liability Board of Awards is required to compensate injured employés for all injuries received by them in the course of their employment and wheresoever such injuries have occurred, or their dependents in case death has ensued, excepting such injuries as may have been purposely self-inflicted. The question of negligence, or whether the injury was occasioned by the fault of the employer, or any of his foremen or by any fellow employé, or as the result of defective machinery, etc., will not be considered by the Board. It is simply required to determine whether in fact any injury was sustained, and if so, whether it was incurred in the course of employment.

Sec. 21-1. All employers who employ five or more workmen or operatives regularly in the same business, or in or about the same establishment, who shall not pay into the state insurance fund the premiums provided by this act, shall be liable to their employés for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employés, and also to the personal representatives of such employés where death results from such injuries and in such action the defendant shall not avail himself or itself of the following common-law defenses:

The defense of the fellow-servant rule, the defense of the assumption of risk, or the defense of contributory negligence.

**Note by the board.**—See note to Section 20-1.

Under this section, employers who do not contribute to the State Insurance Fund are deprived of the common-law defenses, and are liable to respond in damages for death or injury caused by the wrongful act, neglect or default of the employer; or any of the employer's "officers, agents or employés." The words "wrongful act, neglect or default," as used in this section, include all degrees of negligence, including what is sometimes referred to as "wilful negligence," but the term "wrongful act" is not used in the same sense as the term "wilful act" in Section 21-2. (Opinion of Attorney-General Hogan, April 4, 1912.) The only defense available to the employer under this section, where the question of injury itself

is undisputed, is that the injury was occasioned solely by the negligence of the injured employé.

Sec. 21-2. But where a personal injury is suffered by an employé, or when death results to an employé from personal injuries while in the employ of an employer in the course of employment, and such employer has paid into the state insurance fund the premium provided for in this act, and in case such injury has arisen from the wilful act of such employer or any of such employer's officers or agents or from the failure of such employer, or any of such employer's officers or agents, to comply with any municipal ordinance or lawful order of any duly authorized officer, or any statute for the protection of the life or safety of employés, then in such event, nothing in this act contained shall affect the civil liability of such employer, but such injured employé, or his legal representative in case death results from the injury, may, at his option, either claim compensation under this act or institute proceedings in the courts for his damage on account of such injury, and such employer shall not be liable for any injury to any employé, or to his legal representative in case death results, except as provided in this act.

Every employé, or legal representative in case death results, who makes application for an award from the state liability board of awards, waives his right to exercise his option to institute proceedings in any court. Every employé, or his legal representative in case death results, who exercises his option to institute proceedings in court as provided in section 21-2, waives his right to any award; except as provided in section 36 of this act.

**Note by the board.**—See notes to Sections 20-1, 20-2 and 21-1.

(A) The term "wilful act," as employed in the above section, is not synonymous with the expression "wilful neglect," or "wilful negligence," nor is it used in the same sense as the expression "wrongful act," as used in Section 21-1. The term "wilful act" must necessarily mean something intentionally done, not something omitted to be done, and therefore, has reference to an act deliber-

ately and intentionally done, which is a direct and proximate cause of injury to the employé. (Opinion of Attorney-General Hogan, April 4, 1912.)

(B) This section designates certain injuries which constitute an exception to the provision of Section 20-1, to the effect that the employer who has paid into the State Insurance Fund the premiums of insurance fixed by the Board shall not be liable to respond to damages at common-law or by statute for injuries or death of any of his employés. There were two reasons for including the provisions of this section in the act. The first was that every person is given the right by the constitution of the State of Ohio to enter the courts and maintain a civil action against any other person who has done him an injury in his lands, goods, person or reputation. Therefore, an employé injured by the wilful act of his employer, or his employer's officer or agent, could not be deprived of his right to sue by an act of the legislature, and the whole law would have probably been rendered unconstitutional had not the provisions of this section, with reference to the "wilful act," been inserted.

The other reason was one founded upon public policy. The state having passed many statutes requiring the safeguarding of machinery, etc., for the protection of the life and safety of employés, it would be an unwise policy for the state to enact any law by which it would either itself absolutely insure employers against the consequences of the violation of such laws, or permit any one else to effect such insurance. However, by giving the injured employé the option of resorting to the State Insurance Fund in the class of injuries mentioned in Section 21-2, thus giving to the injured employé, or the dependents of a killed employé, an opportunity to obtain compensation, very soon after the injury, and without trouble or expense, the state has gone a long way toward covering all of such injuries by its plan of state insurance. As a matter of fact, it is expected that practically all injured employés, who would under this section have the option of suing in court, will resort to the State Insurance Fund instead, so that the state plan of insurance is much more complete than any plan of insurance which can be lawfully written by the insurance companies.

(C) Special attention is called to the last paragraph of the above section. While the provisions of this paragraph seem to be clear and should require no explanation, an impression has been created in the minds of many persons, to the effect that the injured employé may file his claim with the State Liability Board of Awards, and if dissatisfied with the award, may refuse to accept same, and then enter suit in court against his employer. This impression is entirely erroneous, as it is clearly provided that any employé "who makes application for an award" thereby waives any right he may have had to sue in court, so that the mere filing of the application

is a bar to any proceedings in court. On the other hand, the mere filing of a suit in court against the employer bars the injured employé from thereafter resorting to the State Insurance Fund for compensation. (See note to Section 36; also reference to opinion of Attorney-General Hogan of April 4, 1912, in prefatory note, under the head of "State Insurance Preferable to So-called Employers' Liability Insurance".)

(D) The statutes containing provisions for the protection of the life and safety of employés, and also statutes regulating the employment of minors and females, etc., are printed for free distribution and may be had upon application to Hon. Thomas P. Kearns, Chief Inspector of Workshops and Factories, Columbus, Ohio.

Sec. 22. (There is no section in the act corresponding to this number.)

Sec. 23. The board shall disburse and pay from the fund for such injury, to such employés, such amounts for medical, nurse and hospital services and medicines, as it may deem proper, not, however, in any case, to exceed the sum of two hundred dollars, in addition to such award to such employé.

**Note by the board.**—While it is the purpose of the law to pay for all medical, nurse and hospital services and medicines reasonably required by the injured employé, the only limitation being that this shall not exceed \$200.00, the object of the Board will be to confine such payments to reasonable and necessary expenditures. This will be done by the Chief Medical Examiner, who has prepared a medical and hospital fee bill containing a schedule of charges which will be considered reasonable by the Board, and in this way, the Board expects to effectually prevent payment of extravagant claims for such services.

Sec. 24. In case death ensues from the injury reasonable funeral expenses, not to exceed one hundred and fifty dollars, shall be paid from the fund, in addition to such award to such employé.

Sec. 25. No benefit shall be allowed for the first week after the injury is received, except the disbursement provided for in the next two preceding sections.

**Note by the board.**—The injured employé bears the loss occasioned by his inability to work for the first week after receiving an

injury. The law thus adopts a rule which prevails in all benevolent orders and benefit societies.

Sec. 26. In case of temporary or partial disability, the employé shall receive sixty-six and two-thirds per cent. of the impairment of his earning capacity during the continuance thereof, not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollars per week, if the employé's wages were less than five dollars per week, then he shall receive his full wages; but not to continue for more than six years from the date of the injury, nor to exceed three thousand four hundred dollars in amount from that injury.

**Note by the board.**—This section provides compensation for the injuries wholly disabling employés for a temporary period, and also for partial disability for a temporary period, the award to be determined by the impairment of the earning capacity of the employé, and not altogether by the nature of the injury itself. There is no specific provision in the law for injuries permanent in character resulting in partial disability, such as the loss of an eye or a member. Compensation for such injuries are made under this section. The "average weekly wage" is taken as the basis for awards in all cases of injury. (See Sections 31 and 32 and notes.)

Sec. 27. In case of permanent total disability the award shall be 66 2-3% of the average weekly wage, and shall continue until the death of such person so totally disabled, but not to exceed a maximum of twelve dollars per week, and not less than a minimum of five dollar per week; if the employé's wages were less than five dollars per week, then he shall receive his full wages.

**Note by the board.**—This section provides for compensation for permanent total disability only. (See Sections 31 and 32 and notes.)

Sec. 28. In case the injury causes death within the period of two years the benefits shall be in the amounts and to the persons following:

1. If there be no dependents, the disbursements from the insurance fund shall be limited to the expense provided for in sections 23 and 24.

2. If there are wholly dependent persons at the

time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wage and to continue for the remainder of the period between the date of the death and six years after the date of the injury, and not to amount to more than a maximum of thirty-four hundred dollars, nor less than a minimum of one thousand five hundred dollars.

3. If there are partly dependent persons at the time of the death, the payment shall be sixty-six and two-thirds per cent. of the average weekly wage and to continue for all or such portion of the period of six years after the date of the injury as the board in each case may determine, and not to amount to more than a maximum of thirty-four hundred dollars.

**Note by the board.**—This section provides for awards to be made in case of death by injury. It very wisely makes a distinction between killed employés, leaving no dependents, and those who leave dependents surviving, and it also makes a distinction between those wholly dependent and those partly dependent upon the deceased employé, and gives the Board a wide discretion in determining as a matter of fact whether there are dependents, and if so, whether they are wholly or partly dependent.

Sec. 29. The benefits, in case of death, shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents, as may be determined by the board, which may apportion the benefits among the dependents in such manner as it may deem just and equitable. Payment to a dependent subsequent in right may be made, if the board deem proper, and shall operate to discharge all other claims therefor.

**Note by the board.**—This provision will, in many instances, obviate the necessity of the expense attendant upon the appointment of guardians of infants and other persons under legal disability, and of administrators.

Sec. 30. The dependent or person to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims



upon the decedent for support, in compliance with the finding and direction of the board.

**Sec. 31.** The average weekly wage of the injured person at the time of the injury shall be taken as the basis upon which to compute the benefits.

**Note by the board.**—"My opinion is that Section 31 is a general section providing the basis upon which to compute the benefits payable on account of any injury to an employé, whether death results from such injury or not, and that by 'earning capacity' is meant the 'average weekly wage', except in such cases as are provided for by Section 32 of the act, where the injured employé was of such age and experience that under natural conditions his wages would be expected to increase. Where these conditions exist, then, and then only, is it important for your Board to ascertain what the earning capacity of such employé is." (Opinion of Attorney-General Hogan, January 11, 1912.)

See Sections 26 and 32 and notes.

**Sec. 32.** If it is established that the injured employé was of such age and experience when injured as that under natural conditions his wages would be expected to increase, the fact may be considered in arriving at his average weekly wage.

**Note by the board.**—"The only way by which you can arrive at the 'average weekly wage' referred to in Section 32, would be to ascertain what the weekly wages of the employé were at the time of the injury, his physical condition, the nature of work in which he was employed, his intelligence, his age, and, as there is no definite rule laid down in any of the authorities as to a case of this kind, any other particular fact that in the given instance would assist you in arriving at your conclusion as to the extent to which his wages could reasonably be expected to be increased." (Opinion of Attorney-General Hogan, January 11, 1912.)

See Sections 26 and 31 and notes.

**Sec. 33.** The power and jurisdiction of the board over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings or orders with respect thereto, as, in its opinion, may be justified.

**Note by the board.**—This is a very wise provision of the Act, as it will enable the Board to guard against the imposition of those

who feign injury and will enable the Board to rectify any error of judgment which it may have made in awarding too large or too small a sum to an injured employé.

**Sec. 34.** The board, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

**Note by the board.**—The power here given to the Board will, as a matter of policy, be seldom exercised, as in practically all cases, it is better for the beneficiaries to receive the award to which they are entitled in installments at stated intervals, rather than in a lump sum. The reasons for this are obvious.

**Sec. 35.** Benefits before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to such employés or their dependents.

**Note by the board.**—The Board will follow strictly the rule established in this section. No orders will be accepted, or assignments recognized for any portion of the award made to an injured employé. But payments may be made by the Board directly to the persons rendering the services to injured employés enumerated in Sections 23 and 24.

**Sec. 36.** The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final.

Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant within thirty (30) days after the notice of the final action of such board may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liabil-

ity board of awards, and he shall be notified by the clerk forthwith of the filing of such appeal.

Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant; and, if they determine the right in his favor, shall fix his compensation within the limits and under the rules prescribed in this act; and any final judgment so obtained shall be paid by the state liability board of awards out of the state insurance fund in the same manner as such awards are paid by such board.

The costs of such proceeding, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party. Either party shall have the right to prosecute error as in the ordinary civil cases.

**Note by the board.**—See Section 21-2 and note (C).

The action of the Board is final and no appeal lies therefrom where it determines that an injury has been sustained in the course of employment and fixes the amount and duration of the award. It is only in cases where any relief whatever is denied that an appeal is allowed.

The proceedings to be filed in the Common Pleas Court by the claimant, in the event the State Liability Board of Awards refuses to make him any award, is called an "appeal" in this section, but it is really an original action. As this section fully describes the nature of the action, we deem it unnecessary to discuss the matter at length. It will be noted, however, that the "appeal" provided for in this section is prosecuted in court against the State Liability Board of Awards, and in no event is the employer who contributes to the State Insurance Fund called upon to make any defense or to concern himself in any way as to the proceedings.

The facts necessary to be found by the Board to authorize an award are as follows:

1. That the employer of the applicant was a contributor to the State Insurance Fund at the time of the alleged injury.
2. That the applicant seeking an award was an employé within the meaning of the act at the time of receiving the alleged injury.

3. That an injury was in fact sustained.

4. That such injury was sustained while in the course of his employment.

5. That such injury incapacitated him either wholly or partially for a longer period of time than one week.

6. That no suit has been brought or attempted to be brought in any court by the injured employé prior to filing his claim with the State Liability Board of Awards.

The finding by the Board of the non-existence of any of the facts above enumerated would result in the denial of an award, and in such case an appeal is allowed, as provided in this section.

Sec. 36-1. Such board shall not be bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided; but may make the investigation in such manner as in their judgment, is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of this act.

Sec. 37. The board may make necessary expenditures to obtain statistical and other information to establish the classes provided for in section 17. The salaries and compensation of the secretary, and all actuaries, accountants, inspectors, examiners, experts, clerks and other assistants, and all other expenses of the board herein authorized including the premium to be paid by the state treasurer for the bond to be furnished by him, shall be paid out of the state treasury upon vouchers, signed by two of the members of such board, presented to the auditor of the state, who shall issue his warrant therefor as in other cases.

Sec. 38. No provision of this act relating to the amount of compensation shall be considered by, or called to the attention of the jury on the trial of any action to recover damages as herein provided.

Sec. 39. Annually on or before the 15th day of November, such board, under the oath of at least two of its members, shall make a report to the governor which shall include a statement of the number of awards made by it, and a general statement of the causes of the

accidents leading to the injuries for which the awards were made, a detailed statement of the disbursements from the expense fund, and the condition of its respective funds, together with any other matters which such board deems it proper to call to the attention of the governor, including any recommendations it may have to make.

Sec. 40. The expense of such board in carrying out the provisions of this act shall be paid until January 1, 1912, out of the general revenue of the state not otherwise appropriated. Such expense shall not exceed twenty-five thousand dollars in addition to the salaries of members of such board.

Sec. 41. The expenses of such board in carrying out the provisions of this act shall be paid from January 1st, 1912, to January 1st, 1913, out of the general revenue fund of the state not otherwise appropriated. Such expense shall not exceed one hundred thousand dollars in addition to the salary of the members.

**§ 172. The decision of the Supreme Court of Ohio sustaining the law.**—The Ohio Insurance Fund Act is sustained by the supreme court of that state, as a valid exercise of legislative power and not repugnant to the federal or state constitution in an able opinion by Mr. Justice Johnson, which is concurred in by the entire bench. The opinion is rendered in the case of *State ex rel. Yapple v. Creamer*,<sup>4</sup> and reads as follows:

“Johnson, J.: The statute in question provides for the creation of a state liability board of awards, which shall establish a state insurance fund, from premiums paid by employers and employes in the manner provided in the act. It provides a plan of compensation for injuries, not wilfully self-inflicted, resulting from accidents to employes of employers, both of whom have voluntarily contributed to the fund in the proportion of 10 and 90 per

<sup>4</sup> — Ohio St. —, 97 N. E. 602.

cent. respectively. It applies only where the employer has five or more operators regularly in the same business in or about the same establishment. An employer who complies with the act is relieved from liability to respond in damages at common law, or by statute, for injury or death of an employé who has complied with its provisions, except when the injury arises from the wilful act of himself or officer or agent, or from failure to comply with any law or ordinance providing for protection of life and safety of employés, in which event the employé or his representatives have their election between a suit for damages and a claim under the act. Employers of five or more who do not pay premiums into the fund are deprived in actions against them of the common-law defenses of the fellow-servant rule, the assumption of risk, and of contributory negligence. Where the parties are operating under the act, the injured employé and his dependents in case of death are compelled to accept compensation from the insurance fund in the manner provided, except in the cases above set forth.

"The objections to the validity of the act are stated by different counsel at the bar, and in their briefs, under various heads. All of them are substantially comprised in the following: First. That it is an unwarranted exercise of the police power and directs the state to use public funds for private purposes. Second. That sections 20-1 and 21-1 take private property without due process of law in contravention of sections 15, 16, and 19, art. 1, of the Constitution of Ohio, and the fourteenth amendment to the Constitution of United States, in that it deprives employers of the defense of assumption of risk, and deprives the employé of part of his wages to be paid to the state insurance fund, of the right to sue for injuries sustained, of recourse to the courts, and of a trial by jury. Third. That it deprives parties of the freedom of contract and impairs the obligations of contracts. Fourth. That it makes an unjust and arbi-

trary classification and does not affect all who are within its reason.

Sections 20-1 and 21-1 are as follows, viz.:

“Sec. 20-1. Any employer who employs five or more workmen or operatives regularly in the same business or in or about the same establishment who shall pay into the state insurance fund the premiums provided by this act, shall not be liable to respond in damages at common law or by statute, save as hereinafter provided, for injuries or death of any such employé, wherever occurring, during the period covered by such premiums, provided the injured employé has remained in his service with notice that his employer has paid into the state insurance fund the premiums provided by this act; the continuation in the service of such employer with such notice, shall be deemed a waiver by the employé of his right of action as aforesaid. Each employer paying the premiums provided by this act into the state insurance fund shall post in conspicuous places about his place or places of business typewritten or printed notices stating the fact that he has made such payments; and the same, when so posted, shall constitute sufficient notice to his employés of the fact that he has made such payment; and of any subsequent payments he may make after such notices have been posted.

“Sec. 21-1. All employers who employ five or more workmen or operatives regularly in the same business, or in or about the same establishment who shall not pay into the state insurance fund the premiums provided by this act, shall be liable to their employés for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents, or employés, and also to the personal representatives of such employés where death results from such injuries and in such action the de-

fendant shall not avail himself or itself of the following common-law defenses:

"The defense of the fellow-servant rule, the defense of the assumption of risk, or the defense of contributory negligence."

"The law was passed after a report referred to in the briefs, of a commission appointed by the governor, in obedience to a statute passed for that purpose. The report was prepared after an exhaustive research into industrial conditions in many countries, and an examination of laws, which have been passed in the effort to improve such conditions. Substantially its conclusions are, that the system which has been followed in this country, of dealing with accidents in industrial pursuits, is wholly unsound, that there is an intelligent and widespread public sentiment which calls for its modification and improvement, and that the general welfare requires it. That there has been enormous waste under the present system, and that the action for personal injuries by employé against employer no longer furnishes a real and practical remedy, annoys and harasses both, and does not meet the economic and social problem which has resulted from modern industrialism. Conceding the desirability of improvement, of legislative and governmental action, and the good results in other countries which has no written constitution to limit the legislative power, we in this country have the problem of devising a plan which shall not infringe the fundamental law.

"It is apparent, from a contemplation of the whole enactment and its scope and purpose, as well as of the participation of the state in its administration, that it must find its validity, if at all, in the police power of the state.

"There is now (it can be fairly said) general concurrence in the meaning of the term "police power" and as to its extent.

Professor Freund in his work says at section 2:



"The term 'police power' has never been circumscribed. It means at the same time a power and function of government, a system of rules and an administrative organization and force."

"And in section 3, after discussing its nature, and aims, he says:

"It will reveal the police power not as a fixed quantity, but as the expression of social, economic and political conditions. As long as these conditions vary, the police power must continue to be elastic, i. e., capable of development."

In *State, ex rel Monnett, v. Pipe Line Company*, 61 Ohio St., 520, as to the constitutionality of the Ohio anti-trust law, it is said:

"The definite proposition of counsel upon this point is that although the act is the exercise of legislative power, it transcends the provisions of the state and federal constitutions, which render inviolable the rights of liberty and property, which include the right to make contracts. It would be difficult to place too high an estimate upon these guaranties, and they include the right to make contracts. But it is settled that these guaranties are themselves limited by the public welfare for the exercise of the police power."

In *Phillips v. State*, 77 Ohio St., 216, it is said:

"It is almost an axiom that anything which is reasonable and necessary to secure the peace, safety, morals and best interests of the commonwealth may be done under the police power; and this implies that private rights exist subject to the public welfare. These principles are plainly recognized in Article XIV, Section 1, of the Constitution of the United States, and Article I, Section 19, of the Constitution of Ohio."

The case of *Noble State Bank v. Haskell*, 219 U. S., 104, and *Assaria State Bank v. Dolley*, 219 U. S., 121, involved the constitutionality of laws enacted by Oklahoma and Kansas, in the exercise of the police power to

establish bank depositors guaranty funds created by levy on each of the banks. Objection was made that the tax was an appropriation of the property of one bank to pay debts of another without due process of law.

Mr. Justice Holmes said:

"The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. \* \* \* Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. \* \* \*

"It may be said in a general way that the police power extends to all the great public needs (*Camfield v. United States*, 167 U. S., 518). It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."

"We think it clear that the objects and purposes as above set forth, which the legislature contemplated in the passage of the law in question, are sufficient to sustain the exercise of the police power, and the participation of the state in the manner provided. Whether the plan adopted is the most appropriate or best calculated to accomplish those objects are matters with which the court is not concerned, and the law should not be held to be invalid unless clearly in violation of some provision of the Constitution.

"It is urgently insisted that while the law is apparently permissive and leaves its operation to the election of employers and employes, it is really coercive and upon this premise much persuasive argument against the validity of the law is based. This is an important question in the case.

“An examination of the sections touching the questions made is here necessary. After providing in section 20-1 that an employer who elects to comply with the act shall be relieved from liability to the employé at common law, or by statute (except as provided in section 21-2), it is then enacted in section 21-1: All employers who shall not pay into the insurance fund, \* \* \* shall be liable to their employés for damages, \* \* \* caused by the wrongful act, neglect or default of the employer, his agents, etc., and in such cases the defenses of assumption of risk, fellow-servant, and contributory negligence are not available. So that an employer who elects not to come into the plan of insurance may still escape liability if he is not guilty of wrongful act, neglect, or default. His liability is not absolute as in the case of the New York statute hereinafter referred to. And it can not be said that the withdrawal of the defenses of assumption of risk, fellow-servant and contributory negligence as against an employer who does not go into the plan, is coercive, for such withdrawal is in harmony with the legislative policy of the state for a number of years past. The law known as the Norris law passed in 1910, withdrew these defenses in the particulars covered by the law.

“As to the employé, if the parties do not elect to operate under the act, he has his remedy for the neglect, wrongful act or default of his employer and agents as before the law was passed, and is not subject to the defenses named. If the parties are operating under the act the employé contributes to an insurance fund for the benefit of himself or his heirs, and in case he is injured or killed, he or they will receive the benefit even though his injury or death was caused by his own negligent or wrongful act, not wilful. And that is not all. Under section 21-2 if the parties are operating under the act and the employé is injured or killed, and the injury arose from the willful act of the employer, his officer or agent,

or from failure of the employer or agent to comply with legal requirements, as to safety of employ  s, then the injured employ   or his legal representative has his option to claim under the act or sue in court for damages.

"Therefore, the only right of action which this statute removes from the employ   is the right to sue for mere negligence (which is not wilful or statutory) of his employer, and it is within common knowledge that this has become in actual practice a most unsubstantial thing.

"It is conceded by counsel that the particulars named in section 21-2 are such as form the basis for a large portion of claims for personal injuries. Many employers may elect to remain outside its provisions; it would not be strange if many do so. On the other hand some workmen may feel disposed to do likewise in spite of what would seem to be to their manifest advantage in securing the benefits of the insurance. However, if there should be such general acceptance of and compliance with the statute as its framers hope for, so as to bring a large part of the labor employed in the industrial enterprises of the state within its influence and operation, that would not demonstrate its coercive character. On the contrary it would justify the enactment. Naturally time and experience will disclose imperfections and inefficiencies in the plan; but if it should prove to be feasible, and appropriate in a general way, these imperfections can be corrected by the legislature. On account of the common law and statutory rights still preserved to the parties by this statute (as we have pointed out) in cases where the election is made to come under its provisions as well as not to do so taken in connection with the advantage to each which the plan contemplates, we can not say that the statute is coercive. As was said in the Wisconsin case: 'Laws can not be set aside upon mere conjecture' or speculation. The court must be able to say with certainty that an unlawful result will follow.' We do not see how any such

thing can be said here. Every consideration of prudence and self-interest (things not easily associated with compulsion and coercion) would seem to lead an employé to voluntarily make the contribution and waiver contemplated.

"[2] Second. Does this statute take private property without due process of law and deny the guarantee of the Constitution as claimed?

"Perhaps no exact definition of "Due process of law" has been agreed on. Judge Story defines it in his work on the Constitution (Section 1935): 'The right to be protected in life, and liberty and in the acquisition of property under equal and impartial laws, which govern the whole community. This puts the state upon its true foundation for the establishment and administration of general justice, justice of law, equal and fixed, recognizing individual rights and not impairing them.' In Cooley on Const. Limit., Sec. 356, it is said: 'Due process of law in each particular case, means such an exercise of the government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the classes of cases to which the one in question belongs.'

"The case of *Ives v. South Buffalo Ry. Co.*, 201 N. Y., 276, 94 N. E. 431, 34 L. R. A. (N. S.) 162 (relied on by some of counsel), involved a statute different in many essentials from the Ohio law. Its controlling feature was that every employer engaged in any of the classified industries should be liable to a workman for injury arising in the course of the work by a necessary risk inherent in the business whether the employer was at fault or not and whether the employé was at fault or not, except when its fault was wilful. The court held the law invalid, as imposing the ordinary risk of a business (which under the common law the employé was held to assume) on the employer. The

court states one of the premises on which it proceeds as follows: "When our constitutions were adopted, it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another." But that rule was not of universal application. At common law one may sustain such relation to the inception of an undertaking that he will be held liable for negligence in the progress of the enterprise, even though he have no part or connection with the negligent act itself which caused the injury. Such, for instance, as where the owner of property contracts with an independent contractor to do work which, though entirely lawful, yet has inherent probabilities of harm if negligently performed. The position in the line of causation which employers sustain in modern industrial pursuits is of course the basic fact on which employers' liability laws rest.

"As to the right to abolish the defense of assumption of risk, it is enough to say here that the great weight of authority is against the New York position and the position of such of the counsel in this case as insist on that rule. Some of counsel appearing against the validity of this law, concede the right to abolish the defenses referred to. The supreme courts of Massachusetts, Wisconsin and Washington have recently held in cases sustaining the validity of statutes similar to the one here attacked, that it is within the legislative power to abolish the defense referred to. In re Opinion of Justices, 96 N. E. Rep. 308 (Mass.); *Borgnis v. Falk Co.*, 133 N. W. Rep. 209 (Wis.); *State, ex rel., v. Clausen*, 117 Pac. 1101 (Washington).

"Since the argument of this case the Supreme Court of the United States has decided the case of *Mondou v. N. Y., N. H. & H. Ry. Co.*, 223 U. S. 1, 32 Sup. Ct. 169, 56 L. Ed. —, and has sustained the constitutionality of the employers liability law passed by Congress.

The abolition of these rules was urged as an objection to the law. The court say: 'Of the objection to these changes it is enough to observe: First. A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will \* \* \* of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. *Munn v. Illinois*, 94 U. S. 113, 134 (24 L. Ed. 77); *Martin v. Pittsburg & Lake Erie R. R. Co.*, 203 U. S. 284, 294 (27 Sup. Ct. 100, 51 L. Ed. 184); *The Lottawanna*, 21 Wall. 558, 577 (22 L. Ed. 654); *Western Union Telegraph Co. v. Commercial Milling Co.*, 218 U. S. 406, 417 (31 Sup. Ct. 59, 54 L. Ed. 1088).'

"The recent case of *State v. Boone*, 84 Ohio St. 346, 95 N. E. 924, is cited as indicating limitations of the police power which apply here. The act involved in that case required the physician in attendance on a case of confinement to investigate and certify without compensation to certain facts which would not naturally come within the knowledge of the attending physician, and as to matters wholly outside the scope of his professional duty. The court held the statute unconstitutional as to physician and midwife because of an unreasonable and arbitrary exercise of the police power. That was the proposition of law decided in that case, and no other proposition was decided. The court was careful to point out in the opinion and also on motion for rehearing that the state might require the physician to report to proper authority facts which would come naturally under his observation in the line of his duty without compensation. Other matters referred to in

the opinion were not included in the syllabus which stated the law decided by the court.

"The court remarks that the police power inheres in the sovereignty. Its foundation 'is the right and duty to provide for the common welfare of the governed.' Manifestly the reasoning which led to the conclusion in that case that the statute had been passed by an unreasonable exercise of the police power can have no application here.

"State ex rel., v. Hubbard, 22 C. C. 253, affirmed without opinion, 65 Ohio St. 574, and State, ex rel., v. Guilbert, 56 Ohio St. 575, involving the validity of statutes creating a teachers pension fund and the Torrens law to establish an insurance fund for the protection of land titles concerned laws which were wholly compulsory with no element of choice and were not claimed to have been passed under the police power to cure undesirable public conditions but for mere private benefit. These cases can therefore have no relation to a plan adopted to promote the general welfare, the contributions to which are made after an election by the parties to participate in the undertaking.

"It is urged by counsel opposing this law that the case of Byers v. Meridian Printing Co., 84 Ohio St., 408, is of conclusive weight condemnatory of the legislation we are examining. In that case it is ruled that an amendment to section 5094, Revised Statutes (changing the presumption of malice and burden of proof in action for libel where retraction is made on demand, in the manner stated), is unconstitutional. The decision was put on the ground that plaintiff was guaranteed his remedy by due course of law for an injury done in his land, goods, person or reputation, under Article I, Section 16, Constitution of Ohio. When the injury was done to the reputation of plaintiff by the libel, he was entitled to his constitutional remedy at law, but at the same time he was entitled to demand of the publisher a retraction of



the libel. Therefore the legislature had no right to put him on his election as to two courses both of which he was entitled to follow. The court is careful to declare that it is not disposed to question that a citizen may waive a constitutional right. But being compelled to elect between two rights, both of which a person is entitled to, has no resemblance to waiver. And under the law under investigation here as already shown, the right of action (for injury by wilful act of the employer and for his failure to comply with requirements as to the safety of employés) is still reserved to the employés. So that the only thing withdrawn by this law, and to which withdrawal he consents by his voluntary election to operate under the law, is his right of action for mere negligence, and in place of it he receives the substantial protections and privileges under the state insurance fund." \* \* \*

"The court then shows that many boards hear and determine questions affecting private as well as public rights, and quotes with approval from *State, ex rel., v. Harmon*, 31 Ohio St., 250: 'The authority to ascertain facts and apply the law to the facts when ascertained pertains as well to other departments of government as to the judiciary.' These principles were applied in *France v. State*, 57 Ohio St., 1, 47 N. E. 1041, in which case the court remark that the case of *State, ex rel., v. Guilbert*, 56 Ohio St. 576, 47 N. E. 551, 38 L. R. A. 519, 60 Am. St., Rep. 756, forms no exception, for the powers of the recorder under the statute there in question were essentially those which properly belong to a court.

"Does the law deny recourse to the courts and trial by jury? How does it affect an injured employé where the parties are operating under the act?

"In *B. & O. Rd. Co. v. Stankard*, 56 Ohio St. 232, 46 N. E. 577, 49 L. R. A. 381, 60 Am. St. Rep. 745, which was a suit by the beneficiaries of a member of the relief department of the railroad, the company answered set-

ting up a rule which provided that the decision of the relief department should be final. The court say: 'The right to appeal to the courts for redress of wrongs is one of those rights which in its nature under our Constitution is inalienable and can not be thrown off or bargained away.' But the court shows that parties may contract to submit the fixing of facts to some non-judicial tribunal and say: 'In insurance, and other like cases, where the ultimate question is the payment of a certain sum of money, certain facts may be fixed by a person selected for that purpose in the contract, but the ultimate question as to whether the money shall be paid or not may be litigated in the courts, and a stipulation to the contrary is void.' So that under that rule the parties may conclusively bind themselves in advance to submit questions of amount, etc., to some tribunal other than a court; but the ultimate question of actual liability can not be removed from the courts.

"Now, in this statute, section 36 is as follows: 'Sec. 36. The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final. Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund \* \* \* upon any \* \* \* ground going to the basis of the claimant's right, then the claimant within thirty (30) days after the notice of the final action of such board may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liability board of awards, and he shall be notified by the clerk forthwith of the filing of such appeal. Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant.' There-

fore, if the board denies the claimant's right to participate in the fund on any ground going to the basis of his claim, he may by filing an appeal and petition in the ordinary form be entitled to trial by jury; the case proceeding as any other suit.

"It is not an appeal in the sense of appealing from one court to another, but is really the beginning of an original suit. As to this it must be remembered that the whole proceeding is with and against the board of awards. His claim is not against the employer. There is no dispute between them. His claim is for the benefits of the insurance fund. The board of awards inquire into the matters pointed out in the statute, and in case of dispute as to whether there is any ultimate right to 'participate at all in such fund' he has his recourse to the courts. But he is not confined to that method of proceeding. If he claims that the injury was caused by the wilful act of the employer or officer or agent or from failure to comply with legal requirements as to safety of employes, etc., he may waive his claim under the act and sue in court for his damages. But in his petition in such case he could not claim damages for mere negligence; he having elected to waive that cause of action, having elected, as it were, to assume the risk of his employer's mere neglect in return for the benefits and protection to himself and his heirs afforded by the terms of the act.

"[4] Another objection that is urged against this statute is, that it makes an unjust and arbitrary classification and does not affect all who are within its reason as required by Section 26, Article II, of Constitution of Ohio. Under the law only employers of five or more are affected by it.

"Spear, J., in *Cincinnati v. Steinkamp*, 54 Ohio St., 295, remarked: 'In order to be general and uniform in operation, it is not necessary that the law should operate upon every person in the state, nor in every locality; it is sufficient, the authorities concede in holding, if

it operates upon every person brought within the relation and circumstances provided for, and in every locality where the condition exists.' To same effect are *Platt v. Craig et al.*, 66 Ohio St. 75, 63 N. E. 594; *Gentsch, v. State, ex rel.*, 71 Ohio St. 151, 71 N. E. 900; *Ry. Co. v. Hosterman*, 72 Ohio St. 107, 63 N. E. 1075.

"We think the classification is reasonable and proper. In the nature of the case the risks of any regular employment are less and the opportunity for avoiding them better where an employé is one of four than when the number is larger. As was said by Winslow, C. J., in *Borgnis v. Falk*, *supra*: 'The difference in the situation is not merely fanciful; it is real.' *St. Louis Cons. Coal Co. v. Illinois*, 185 U. S., 203, 22 Sup. Ct. 616, 46 L. Ed. 872, is a case in which a classification was made under somewhat similar manner, and was upheld. Nor do we think it an objection that the law applies only to workmen and operatives and not to all others. This classification brings within the law all employés within its reason.

"[5] As to the suggestion that this statute impairs the obligation of contracts it is sufficient to say that it can, of course, not affect contracts in existence and unexpired at the time it is put into operation by the employer.

"It is suggested that this legislation marks a radical step in our governmental policy not contemplated by the Constitution, and which it is the duty of the court to condemn. But it creates no new right or new remedy for wrong done. It is an effort to in some degree answer the requirements of conditions which have come in an age of invention and momentous change. The courts of the country, while firmly resisting encroachments on the Constitutions in the past, have yet found in their ample limits sufficient to enable us to meet the emergencies and needs of our development, and we do not

find that this statute goes beyond the bounds put upon the legislative will.

"The demurrer to the petition will be overruled, and the writ of mandamus awarded.

"Demurrer overruled."

**§ 173. Workshop and factory inspection and regulation act.**—This statute, which takes the place of an earlier act on the subject, reads as follows:

Section 1. That sections 1003 and 1004 of the general code be amended so as to read as follows:

Sec. 1003. Every manufacturer of the state shall within three days after the happening of any accident in his establishment resulting in death, or bodily injury of such a nature that the person injured does not return to his or her employment in said establishment within two or more days after the occurrence of the accident, forward by mail to the chief inspector of workshops and factories a report containing the following particulars in full:

1. Name and address of manufacturer, (person, firm or corporation).
2. Nature of business in which manufacturer is engaged and place where accident occurred.
3. Name, address, sex, age and kind of employment of person killed or injured and whether such person is married or single.
4. Time of day deceased began work on day of accident, time of day accident occurred, and date of accident or death.
5. At what employed when killed or injured, whether such person was familiar with the work at which engaged or the machinery which he was operating and whether such machinery was in good order and guarded so as to prevent accident under ordinary circumstances. If such machinery was not guarded, reasons for not guarding the same.

6. Description of manner in which such person was killed or injured.

7. Description of nature and extent of injury.

8. Number of persons deprived of support in consequence of such death or injury.

Such manufacturer shall, in all cases of death within six months after the accident, or in case the person injured returns to work in his establishment within six months after the accident, forward by mail to the chief inspector of workshops and factories within five days after such death or such return to work, or in case of no death or return to work within six months, then within five days after the expiration of such six months, a supplemental report which shall contain the following particulars in full:

1. Name and address of manufacturer.

2. Name, sex and age of person injured and date and place where accident occurred.

3. A correct statement of the amount of wages paid to such person at the time of such injury and the amount of wages lost during the period between the time of such accident and the time of forwarding such supplemental report.

4. The amount of compensation paid by such manufacturer by reason of such injury or death, the names of persons to whom such compensation was paid and a statement of reasons for paying such amounts to such persons.

Sec. 1004. Whoever violates or fails to comply with any requirement of the preceding section shall be fined not less than fifty dollars, nor more than one hundred dollars for the first offense, and not less than two hundred dollars nor more than five hundred dollars for each subsequent offense.

§ 174. Rules of procedure before the state liability boards of awards.—

**RULE 1.—OFFICE HOURS.**

The office hours of the board will be from 8:00 o'clock A. M. to 12:00 o'clock M.; and, from 1:30 o'clock P. M. to 4:30 o'clock P. M.

**RULE 2.—SESSIONS OF THE BOARD.**

Sessions of the board will be held regularly at the office of the Board on the sixth floor of the Hartman Building, in the City of Columbus, beginning at 10:00 A. M. of each business day, and continuing until the business of the day is completed; provided, that sessions may also be held at any other place within the State should the business to be transacted seem to require it.

**RULE 3.—FORMS PRESCRIBED.**

Printed forms of all notices, applications, proofs, certificates, etc., necessary for perfecting any claim before the Board will be furnished free of charge by the Board. Such forms must be used in all cases.

**RULE 4.—INJURY NOT RESULTING IN DEATH, NOTICE OF.**

An employé who has been injured in the course of his employment and who contemplates filing an application for an award, shall, within one week from receiving such injury, notify or cause notice to be given the Board of the time, place and nature of his injury and the name of his employer. Forms of such notices can be obtained from the employer. Such notices should be mailed to "State Liability Board of Awards, Columbus, Ohio."

Upon receiving such notice the Board forthwith will mail to the injured employé proper forms and blanks for his use in perfecting his claim, and notify the employer thereof. Unless such notice is given, no application for an award will be considered by the Board.

**RULE 5.—INJURY RESULTING IN DEATH, NOTICE OF.**

When death results from an injury received by an employé in the course of his employment, the provisions of Rule 4 shall apply, except that notice of death must be

given by the attending physician, undertaker, employer, executor, administrator or a beneficiary, within one week from the time of death.

**RULE 6.—DOCKETING AND NUMBERING.**

Notices provided for by Rule 4 and 5 shall be numbered when received by the Board and entered upon a docket kept for the purpose, and each paper thereafter filed in connection with the claim shall be given the same number as the original notice.

**RULE 7.—APPLICATION - INJURY.**

Application for awards in all cases of injury not resulting in death must be made by the party injured not less than two weeks nor more than three months after the injury is received.

**RULE 8.—APPLICATION - DEATH.**

Application for awards in all cases of injury resulting in death must be made by the executor, administrator or beneficiary of the deceased, or by the attending physician or undertaker where there is no beneficiary, not less than two weeks nor more than six months after the death of the injured employé.

**RULE 9.—MODIFICATION OF RULES.**

The provisions of Rules 4, 5, 7 and 8 will not be relaxed unless in the judgment of the Board, the failure to observe their provisions was occasioned by want of knowledge of their existence, and unless their strict enforcement will result in hardship and injustice. In such instances the Board will, upon application, extend the time for filing.

**RULE 10.—PROOF.**

The proof of all claims shall be made by affidavit as far as possible. But the Board will, if in its judgment it is deemed necessary, require medical or other examinations, and may take oral testimony of witnesses, the claimant being notified of the time, place and manner of taking the same. The Board will also hear any oral tes-



timony offered by an applicant. Depositions of witnesses may also be filed by an applicant, but notice of the time and place of taking the same must be given the Board prior to their taking. Any duly authorized inspector of the Board shall have the right at any time either before or after an award to make an investigation as to the cause and extent of the injury for the purpose of ascertaining facts. The proof in every instance shall be such as to show clearly the jurisdiction of the Board, the rights of the applicant to an award, and the amount thereof.

#### RULE 11.—DUTY OF CLERK.

The clerk shall keep a record of the time or filing all notices, applications, affidavits, statements, depositions, medical and other forms of proof, and when the proof is seemingly complete, shall enter the same in the order of the completion of the proof upon a separate record to be known as the "Hearing Docket."

#### RULE 12.—HEARINGS.

Applications for awards will be set for hearing in the order in which they appear on the "Hearing Docket." It shall be the duty of the Clerk to make an assignment of applications, for hearing for each business day one week in advance, and forthwith to notify the applicant by postal card of the time of the hearing. Applicants may appear before the Board either in person or by agent or attorney. If no appearance is made, the application will be heard and disposed of upon the proofs on file, if sufficient, or may be continued until a future day, or indefinitely, for the attendance of applicant or counsel, or for the furnishing of further proof.

#### RULE 13.—AWARDS.

All awards, other than for medical, nurse and hospital services and for funeral expenses, will be payable in bi-weekly installments. In case of temporary disability or partial impairment of earning capacity, the Board, at the time of making the award, will fix a time at which

payments shall cease, unless the injured employé shall make it appear to the Board that he is still incapacitated as a result of the injury for which the award was originally made. In such case a modification of the terms of the original award may be made.

**RULE 14.—PAYMENT OF LUMP SUMS.**

Payment of awards in lump sums will be made only when, in a supplemental proceeding, it is made to appear to the Board that it would be to the mutual advantage of the applicant or beneficiaries and to the State Insurance Fund.

**RULE 15.—CONTINUANCE.**

The policy of the Board will be to determine all questions brought before it as speedily as possible; but continuances of hearings for any reasonable cause may be had upon the request of the applicant.

The Board will continue hearings on its own motion only when the volume of business is such as to demand it, or when the proof is not satisfactory, or is insufficient.

**RULE 16.—MODIFICATION OF AWARDS.**

The Board, having continuing power and jurisdiction over an award, may make changes or modifications of its former findings, either upon its own motion or upon the application of the beneficiary or beneficiaries. If on its own motion, it must first notify the beneficiary or beneficiaries. Upon application being made for a modification of an award, it shall be docketed and set for hearing as in the case of original applications.

**RULE 17.—CHANGES IN RULES.**

The rules of the board are subject to alterations or amendments at any time; and the board will make additional rules, whenever, in its judgment, the same are necessary.

**§ 175. Procedure as to employers.**—The steps required to be taken by every employer of five or more workmen or operatives regularly in the same business

in the State of Ohio to obtain the immunities and benefits and avoid the penalties of the act are the following:

First. He should carefully read the rules of procedure before the State Liability Board of Awards which have been prepared by the Board for the guidance of employers and employés affected by the act and notify the Board that he desires to insure under the act.

Second. He should fill out the application for classification of industry and for premiums and the report as to number of accidents and pay roll and send the same to the State Liability Board of Awards at Columbus. These forms are set out in sections 177 and 178.

Third. He should promptly receive in return the premium rate fixed by the Liability Board according to the resolution in note under section 17 of the Compensation Act.

Fourth. He should then pay the premium fixed by the Board and post a copy of the "notice to employés" set out in section 179.

**§ 176. Forms of applications and notices to be used by employers covered by the act.**—Conformably to section 8 of the act the State Liability Board of Awards has prescribed the forms to be filled out by the employer to avail himself of the provision of the act and likewise the notice to be posted by an employer who has paid the premiums. These forms are set out in the three succeeding sections.

**§ 177. Form of application for classification of industry and for premium.**

State Liability Board of Awards,

Columbus, Ohio.

The undersigned, \_\_\_\_\_

(Individual, firm, partnership or corporation)

an employer of labor in Ohio, and authorized to do business in this State, hereby makes the following declaration for the purpose of enabling the State Liability Board of Awards to determine the classification or classifications of employments in the business conducted by said undersigned, and to fix the rate or rates of pre-

mium therefor, and to name the aggregate amount of premium to be paid to the Treasurer of the State of Ohio as custodian of THE STATE INSURANCE FUND.

It is understood by said employer that if he elects to accept the provisions of the act creating said State Insurance Fund and to pay the premium quoted to him by said State Liability Board of Awards upon the basis of this declaration, that this declaration in its entirety shall, upon said election by said employer, become and constitute his application for the rights and benefits of said fund. It is further understood that the declarations herein contained are made only for the purpose of enabling the Board to quote a correct premium rate.

1 Name of applicant\_\_\_\_\_

Address \_\_\_\_\_

(City, street number, etc., where principal office is located)

2

Location of All Places Where Employés Are Employed.	Kind of Business and Different Employ- ments.	Est. Ave. No. Employés in Each Employment.	Est. Total Pay-Roll for Next Six Months.
-----	-----	-----	\$-----
-----	-----	-----	-----

3 The following is a correct statement of the average number of employés employed, and the total pay-roll of the undersigned for the twelve months constituting the business year last preceding this application, ending-----, 191--

Location of All Places Where Employés Are Employed.	Kinds of Business and Different Employ- ments.	Ave. No. Employés in Each Employment.	Total Pay-Roll.
-----	-----	-----	\$-----
-----	-----	-----	-----

- 4 The foregoing enumeration of employés includes all "workmen or operatives regularly employed in the same business, or in or about the same establishment," in the service of the undersigned in connection with the operation herein described to whom compensation of any nature is paid or allowed. The officers of a corporation, as such, and persons wholly engaged as traveling salesmen, are not included. The members of the STATE LIABILITY BOARD OF AWARDS, or any of its duly authorized employés, shall be permitted to examine the books of the undersigned at any time, so far as they relate to the number or names of workmen or operatives regularly employed, and the compensation earned by them, as above certified and estimated.
- 5 There are no hand-fed machines used for stamping, punching, pressing, cutting or embossing metal, except as herein stated: \_\_\_\_\_
- 6 There is no stevedoring of raw material or supplies—except as herein stated: \_\_\_\_\_
- 7 No railroads, switches, or sidetracks, other than by hand-power are operated—except as herein stated: \_\_\_\_\_
- 8 No explosives are used, except as herein stated: \_\_\_\_\_
- 9 No operations of any nature not herein disclosed are conducted by the undersigned at the places covered hereby—except as herein stated: \_\_\_\_\_
- 10 The buildings and structures in which the business of the undersigned is carried on are as follows: \_\_\_\_\_  
\_\_\_\_\_  
(State number, size, and whether frame, brick, stone or concrete.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
There are \_\_\_\_\_ boilers. Their type is \_\_\_\_\_  
\_\_\_\_\_  
Their age is \_\_\_\_\_  
There are \_\_\_\_\_ passenger elevators and \_\_\_\_\_ freight elevators.  
Their type is \_\_\_\_\_  
Their maker's name is \_\_\_\_\_  
\_\_\_\_\_
- 11 The foregoing statements are true and are made with the understanding that should the classification or classifications, rate or rates and the aggregate amount of premium fixed by the STATE LIABILITY BOARD OF AWARDS under this application be satisfactory to the undersigned when advised of the same, the

undersigned shall then have the option of election to accept the provisions of an Act of the General Assembly of Ohio, entitled "An Act to create a state insurance fund for the benefit of injured, and the dependents of killed employes, and to provide for the administration of such fund by a state liability board of awards," passed May 31, 1911, and approved by the Governor, June 15, 1911.

Said option so to elect, if exercised, will be exercised by the payment to the TREASURER OF STATE, as custodian of the STATE INSURANCE FUND OF OHIO, at his office in the City of Columbus, Ohio, of the sum so designated by the STATE LIABILITY BOARDS OF AWARDS, and such election will date from the first following week-day not a holiday after the day on which such payment is actually received by the Treasurer of State.

- 12 The statements herein are also made with the understanding that if the pay-roll of the undersigned be greater for the ensuing six months than the estimate herein made, that the premium shall be proportionately increased, and shall be due and payable in the same manner as the original payment, at the end of the six months' period; and, if the pay-roll for such period be less than herein estimated, a proportionate reduction will be made, a credit for the amount of which will be allowed to the undersigned upon the premium for the six months' period next ensuing.

In witness whereof \_\_\_\_\_ have hereunto subscribed  
(I or we)

\_\_\_\_\_ name \_\_\_\_\_ and caused our official seal to be affixed,  
(my or our) (If a corporation)

this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

Witness: \_\_\_\_\_

(Seal)

State of Ohio, \_\_\_\_\_ County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_, before me, a  
\_\_\_\_\_ in and for said county appeared personally  
\_\_\_\_\_ and \_\_\_\_\_  
who, being first duly sworn, declared that the facts set forth in the foregoing application are true.

(My commission expires \_\_\_\_\_)

(If the employer is a corporation, signature should be made and seal used according to the laws of Ohio, and the official taking

this acknowledgment is cautioned to see that it is properly taken.  
Do not omit official titles of affiants if corporation.)

Office of  
STATE LIABILITY BOARD OF AWARDS,  
Columbus, Ohio.

Using the information contained in the foregoing application, as a basis, the STATE LIABILITY BOARD OF AWARDS has classified the employment or employments of \_\_\_\_\_, of \_\_\_\_\_, as follows:

Description of Business or Employment.	Estimated Average Number of Employés in Each Employment.	Estimated Total Pay- Roll for Next Six months in Each Em- ployment.	Rate per \$100.00 of Wages.	Aggregate Total.	Total.
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----

Accordingly, on this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, a PAY-IN ORDER has been mailed to said applicant and said PAY-IN ORDER will be the authority for the Treasurer of State to receive the sum of \$\_\_\_\_\_ from said APPLICANT, and to place the same to the credit of the State Insurance Fund of Ohio.

STATE LIABILITY BOARD OF AWARDS,  
T. J. DUFFY,  
MORRIS WOODHULL,  
WALLACE D. YAPLE.

(Seal.)

Attest:

\_\_\_\_\_  
Chief Auditor.

Attest:

\_\_\_\_\_  
Actuary.

§ 178. Form of supplementary report—Accident experience.<sup>5</sup>

Table of Number of Accidents and of Pay-Roll_____	In '09	In '10	In '11
	July 1, 1909 to July 1, 1910.	July 1, 1910 to July 1, 1911.	July 1, 1911 to July 1, 1912.
Table of Number of Accidents and of Pay Roll—			
Total number of all accidents happening (to include only those cases causing a disability of one or more days),-----			
Number of accidents causing death-----			
Number of accidents causing disability lasting more than four weeks-----			
Total amount of pay rool-----	\$	\$	\$

Employer's Name----- Address-----

§ 179. Form of notice of employer to employés:

NOTICE TO EMPLOYEES.

All workmen or operatives employed in or about this establishment are hereby notified that the employer or employers owning or operating the same have paid into The State Insurance Fund according to the laws of Ohio the premiums provided by the act creating the State Liability Board of Awards to administer said fund. (Act of May 31, 1911, Ohio Laws, Vol. 102, page 524.)

RULE 4.—INJURY NOT RESULTING IN DEATH, NOTICE OF.

An employé who has been injured in the course of his employment and who contemplates filing an application for an award, shall, within one week from receiving such injury, notify or cause notice to be given the Board of the time, place and nature of his injury and the name of his employer. Forms of such notices can be obtained from the employer. Such notices should be mailed to "State Liability Board of Awards, Columbus, Ohio."

Upon receiving such notice the Board forthwith will mail to the injured employé proper forms and blanks for his use in perfecting

<sup>5</sup> It is absolutely essential that the employer furnish the information desired on this sheet. This is very IMPORTANT and WILL AFFECT THE RATE which will be quoted.



his claim, and notify the employer thereof. Unless such notice is given, no application for an award will be considered by the Board.

**RULE 5.—INJURY RESULTING IN DEATH, NOTICE OF.**

When death results from an injury received by an employé in the course of his employment, the provisions of Rule 4 shall apply, except that notice of death must be given by the attending physician, undertaker, employer, executor, administrator, or a beneficiary, within one week from the time of death.

**RULE 7.—APPLICATION-INJURY.**

Application for awards in all cases of injury not resulting in death must be made by the party injured not less than two weeks nor more than three months after the injury is received.

**RULE 8.—APPLICATION-DEATH.**

Application for awards in all cases of injury resulting in death must be made by the executor, administrator or beneficiary of the deceased, or by the attending physician or undertaker where there is no beneficiary, not less than two weeks nor more than six months after death of the injured employé.

Date-----Employer.

**§ 180. A comparison of premium rates under the Ohio law with liability insurance rates under compensation laws.**

The economies effected by the Ohio method are shown by the subjoined table which sets out the rates imposed by the Board in forty different employments, and the rates paid to liability insurance companies in the states of New Jersey, Illinois and Wisconsin under their compensation acts. Under the Ohio act the employer engaged in the manufacture of confectionery is insured against liability for personal injuries by the payment of 70 cents on each one hundred dollars of his pay roll. This protection will cost him \$1.50 under the compensation act of New Jersey, two dollars under the Illinois law and \$2.10 under the Wisconsin statute. In the latter state the non-electing employer covered by the act will pay 75 cents, but he is denied the defenses of contributory negligence and assumption of risk. The comparison as to other employments is shown in the following

table which covers 87 per cent. of all employers covered by the act.<sup>6</sup>

A TABLE OF COMPARATIVE RATES.

Compiled by Emile E. Watson, Actuary of the Board.

Representative Employments	Ohio State Ins. Rate	New Jersey Only Rate	Ill. Only Rate	Wis. Employer Liability Rate	Wis. Com- pens'n Rate
Confectionery Mfrs. -----	\$0.70	\$1.50	\$2.00	\$0.75	\$2.10
Acid Mfrs. -----	1.20	3.00	4.05	1.65	4.20
Car Mfrs., R. R. -----	1.85	3.50	4.70	2.40	4.90
Coal Miners -----	1.80	6.00	15.00	3.00	8.40
Carpenter Contractors -----	3.05	3.75	4.50	3.00	5.25
Mason Contractors -----	3.90	5.25	6.30	4.20	7.35
Electric Light & Power Cos. -----	4.15	6.00	7.20	4.80	8.40
Harness and Saddle Mfrs. -----	.85	1.25	1.65	.55	1.75
Saw Mills -----	2.20	4.50	5.60	2.25	6.30
Planing Mill & Lumber Yard -----	1.60	3.25	4.05	1.50	4.55
Meat Packing & Stock Yards -----	1.40	2.25	3.35	1.50	3.50
Machine Shops -----	.85	2.00	2.50	1.00	2.80
Machine Shops, with foundry -----	.95	2.50	3.10	1.20	3.50
Foundry (iron) -----	1.25	2.75	3.40	1.50	3.85
Boilermakers -----	1.95	3.50	4.25	2.25	4.90
Flour Mills -----	1.20	2.00	2.70	1.20	2.80
Mining (except coal) clay -----	1.80	6.00	8.10	4.00	8.40
Ice (Artificial) Mfrs. -----	1.20	2.50	3.35	1.35	3.50
St. Ry.—Electric-Interurban -----	3.05	8.00	10.80	6.25	11.20
St. Ry.—Electric not Inter'bn -----	2.15	5.00	6.75	3.75	7.00
Oil (fish, lard, tallow) Mfrs. -----	1.10	2.25	3.00	1.05	3.15
Blast furnaces -----	2.65	6.00	8.10	3.75	8.40
Iron Smelters -----	2.65	6.00	8.10	3.75	8.40
Paper Mfrs. (No saw or bark mills) -----	1.55	2.50	3.35	1.50	3.50
Card Board Mfrs. (No pulp mills) -----	1.15	2.00	2.70	1.20	2.80
Writing Paper Mfrs. -----	1.20	1.25	1.65	1.20	1.75
Glass Mfrs. (No plate or window) -----	.45	1.25	1.65	.30	1.75
Printers -----	.85	1.25	1.55	.60	1.75
Rubber Mfrs. -----	1.00	2.25	3.00	.63	3.15
Freight Handlers—Stevedore -----	2.20	4.00	8.00	3.00	5.60
Lime Quarries — Inc. Blasting, Crushing -----	3.30	6.00	8.10	3.50	7.00
Cement Mfrs.—No quarry -----	2.80	4.05	5.40	3.13	5.60
Clothing Mfrs. -----	.35	.60	.75	.27	.84
Mattress Mfrs. (No spring or wire) -----	.50	1.50	1.85	.73	2.10
Tobacco Mfrs.—Chewing smoking -----	.50	.75	1.00	.32	1.05
Great Lakes Steamers -----	1.90	3.00	1.80	1.35	3.50
Scrap Iron Dealers (Shops or Yard) -----	3.80	6.00	8.10	4.20	8.40
Storage (Cold-grain) -----	2.05	2.50	3.38	1.75	3.50
Furniture Mfrs. -----	1.00	2.00	2.50	.80	2.80
Wood Turners -----	1.00	2.25	2.80	.96	3.15
Totals -----	\$69.10	\$131.85	\$180.23	\$83.08	\$182.84
Ratio -----	1.	1.9	2.6	1.2	2.6

<sup>6</sup> The State Liability Board of Awards in an authorized circular says:

The Ohio State Compensation Rates are the lowest rates in existence covering the protection afforded by the law.

All other states and all private companies, and some, even for less protection (one-half wages indemnity instead of two-thirds wages indemnity), charge rates from 40% to 250% higher.

The reason is that Ohio handles her own Insurance Fund and provides Insurance at Cost.

**§ 181. Procedure as to injured employés.**—The State Liability Board of Awards in devising the procedure to be followed by workmen who are covered by the act and who are injured in the due course of their employment, or by their dependents in case they are killed, have divided the various claims that such workmen or their dependents might have for compensations into five groups, as follows:

I. Claims for compensation for injury not resulting in death and which does not incapacitate the worker for more than seven days;

II. Claims for compensation in case of temporary partial disability, temporary total disability, or permanent partial disability;

III. Claims for compensation in cases of permanent total disability;

IV. Claims for compensation in cases of death without dependents;

V. Claims for compensation in cases of death with dependents.

The Board has devised specific blank forms for each class to be filed by those making claims which fall in the five foregoing groups of claims. These forms are grouped together according as the claim falls in the separate groups, and are given in the succeeding sections in the above named order.

**§ 182. Form of procedure on notices in general.**—As soon as the check of the employer to pay the premium prescribed in section 17 of the Ohio act is received by the State Treasurer, the State Liability Board of Awards sends him the following:

First, a notice by card that he is under the protection of the State insurance plan;

Second, the blank forms: (a) first notice of injury (filled out by injured person); (b) first notice of death

(filled out by physician, undertaker, administrator, or beneficiary).

These forms of notices are given in the following sections in the order named.

**§ 183. Form of first notice of injury. (a)<sup>6a</sup>**

**STATE LIABILITY BOARD OF AWARDS,  
COLUMBUS, OHIO.**

1. Name of injured person-----  
Address -----  
                    (Street and Number.)                      (Post Office.)  
Sex----- Nationality----- Speak English?-----
  2. Name of employer-----  
Office address -----  
                    (Street and Number.)                      (Post Office.)  
Nature of business-----
  3. Date of accident----- Hour of day----- M.
  4. Exact location of place where accident happened?-----  
-----  
-----
  5. How did accident happen?-----  
-----  
-----
  6. State fully nature of injury-----  
-----  
-----
  7. Is injured person able to work?----- If not when will  
injured person be able to return to work? Probably in-----  
weeks,-----days. (It is important that a careful answer  
be given.)
  8. Will injured person be able to take up regular employment  
when he does return to work?----- If not, why?  
-----
  9. Name of attending physician----- Address-----
  10. If taken to hospital, give name and address of hospital-----  
-----  
-----
- Name of injured person making this report.

<sup>6a</sup> This form must be filled out and mailed to the "State Liability Board of Awards, Columbus, Ohio," within one week after date of injury. See Rule 4 of said Board.

### § 184. Form of first notice of death. (b)<sup>7</sup>

#### STATE LIABILITY BOARD OF AWARDS, COLUMBUS, OHIO.

1. Name of deceased person \_\_\_\_\_  
 Who resided at \_\_\_\_\_  
 (Street and Number.) (Post Office.)  
 Sex \_\_\_\_\_ Nationality \_\_\_\_\_ Speak English? \_\_\_\_\_
2. Name of employer \_\_\_\_\_  
 Office address \_\_\_\_\_  
 (Street and Number.) (Post Office.)  
 Nature of business \_\_\_\_\_
3. Date of accident \_\_\_\_\_ Hour of day \_\_\_\_\_ M.
4. Exact location of place where accident happened? \_\_\_\_\_  
 \_\_\_\_\_
5. How did accident happen? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
6. State fully nature of injury which caused death of deceased \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
7. Give date of death \_\_\_\_\_, Hour of day \_\_\_\_\_ M.
8. Name of attending physician \_\_\_\_\_ Address \_\_\_\_\_
9. Did deceased have any one dependent upon him for support,  
 either wholly or partially? \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Name of person making this report.  
 \_\_\_\_\_

#### GROUP I.

#### FORMS WHERE EMPLOYEE IS INCAPACITATED NOT TO EXCEED SEVEN DAYS.

### § 185. Formal procedure for procuring medical, nurse, and hospital services and medicines, without compensation.

A workman who is covered by the act and whose injury does not incapacitate him for a period longer than seven days, is entitled to compensation from the state insurance fund for medical, nurse and hospital services and medicines in such amounts as the Board of Awards

<sup>7</sup> Person making this report should state, on line below signature, whether he or she is the attending physician, undertaker, employer, executor, administrator or a beneficiary.

may deem proper, not, however, in any case to exceed the sum of two hundred dollars. (See §§ 23, 24 and 25 of the act.)

In cases of this character the application, notices and forms which the board requires to be filled out are respectively: (a) application for money to pay medical, nurse and hospital services and medicines; (b) form for physicians fee bill; (c) form for druggists cost bill; (d) form for employers certificate and oath; (e) certificate and oath of lay witness. The acknowledging officer is charged with the duty to see that the blanks are filled and the acknowledgment properly taken.

**§ 186. Form of application for money to pay for medical, nurse and hospital services and medicines, without compensation. (a)<sup>7a</sup>**

State Liability Board of Awards, Columbus, Ohio.

I, \_\_\_\_\_, of \_\_\_\_\_  
 (Name of Applicant) (Post Office)  
 \_\_\_\_\_, County of \_\_\_\_\_, State of Ohio,  
 (Street and Number)  
 do hereby make application for money to pay for medical, nurse and hospital services and medicines for injuries received while in the employ of \_\_\_\_\_, whose plant is situated at \_\_\_\_\_, County of \_\_\_\_\_, State of Ohio.

---

<sup>7a</sup> All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

Applications for awards in all cases of injury not resulting in death must be made by the party injured NOT LESS THAN TWO WEEKS NOR MORE THAN THREE MONTHS after the injury is received.

I have incurred for said services and medicines for treatment for the injury herein described the following bills:

Date	To Whom Paid or Due.	Item	Amount	Bills Paid (Yes or No)
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Age?----- Sex?----- Color?----- Place of birth?-----  
 Married, single or divorced?----- Wife living?-----  
 Parent or guardian, if minor?-----  
 How many children living?----- Their ages?-----  
 Which of them are dependent upon you for support?-----  
 To what degree is each dependent?-----  
 -----  
 -----
2. What weekly wage were you receiving at time of injury?-----
3. How long had you been receiving such wages?-----
4. What work were you engaged in when injured?-----
5. How long had you been doing this work?-----
6. Was this your regular employment?----- 7. If not,  
 what was your regular employment?----- 8. When  
 did you enter employ of present employer?-----
9. With whom were you employed previous to this?-----  
 ----- 10. How long?----- 11. Were you skill-  
 ful in the labor being performed when the injury happened?  
 -----
12. Describe the injury-----  
 -----
13. Where did you go after accident?-----
14. When did you return to work?----- 15. How many  
 days were you disabled?----- 16. Did you return to  
 work as soon as you were able?-----
17. Name of attending physician----- Address-----
18. Date of accident----- 19. Hour of day-----, ---M.
20. State clearly the manner in which you were injured-----  
 -----  
 -----
21. Was accident caused by fault of fellow-workman?-----
22. Did the accident happen on the premises, or away from the  
 plant of your employer?-----  
 -----

23. If away from the plant, state where, how and by whom injured  
-----  
-----
24. Were you acting under the direction of a foreman?-----  
Were you obeying orders?-----
25. Was accident caused by fault of machines or devices?-----
26. Name of machine, device, etc., causing accident-----
27. Describe fully its condition-----
28. Were all safeguards in their places at time you were hurt?-----
29. If any safeguard was removed, did you remove it or was it removed by any of your fellow workmen, or superintendent or foreman? -----  
-----
30. Name of manager of said plant-----Address-----
31. Name of foreman or superintendent in charge of department in which I was injured-----Address-----
32. Names of three witnesses who witnessed the accident:  
Name -----Address -----  
Name -----Address -----  
Name -----Address -----
- Witness: ----- (Signed) -----  
-----  
----- Applicant.

OATH.

State of Ohio, ----- County, ss:  
Before me, -----, a notary public in and for said county, on this ---- day of -----, 191--, personally appeared -----, the above named applicant, who, first being duly sworn, declared that the facts set forth in the foregoing application are true.  
(Seal) -----

Notary Public.

My commission expires -----

§ 187. Form of physician's fee bill. (b)

The following is an itemized account of professional services rendered in connection with the treatment of injury to-----  
(Name of patient.)  
of ----- together with charges therefor:  
(Full address of patient.)

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

----- (Signature of Affiant.)



## OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purposes above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

(Seal.) \_\_\_\_\_ Notary Public.

My commission expires \_\_\_\_\_

### § 188. Form of druggist's cost bill. (c)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to \_\_\_\_\_, of \_\_\_\_\_, together with charges (Name of patient.) (Full address of patient.) therefor:

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_ (Signature of Affiant.)

## OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

\_\_\_\_\_ Notary Public.

(Seal.) \_\_\_\_\_ My commission expires \_\_\_\_\_

### § 189. Form of employer's certificate and oath. (d)<sup>8</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer \_\_\_\_\_ Address \_\_\_\_\_
2. Nature of business \_\_\_\_\_

<sup>8</sup> All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise,

3. Name of injured\_\_\_\_\_ Address \_\_\_\_\_ 4. Age\_\_\_\_\_ Sex\_\_\_\_\_ Color \_\_\_\_\_ Place of birth\_\_\_\_\_ 5. Wages, or average earnings per day?\_\_\_\_\_ Working days per week?\_\_\_\_\_
6. How long had he been receiving such wages?\_\_\_\_\_
7. What work was he engaged in when injured?\_\_\_\_\_
8. How long had he been doing this work?\_\_\_\_\_ 9. Was this his regular employment?\_\_\_\_\_ 10. If not, what was his regular employment?\_\_\_\_\_ 11. Was he skilled in the labor being performed when injury happened?\_\_\_\_\_ 12. When did he enter your employment?\_\_\_\_\_ 13. How long have you known him?\_\_\_\_\_ 14. How long was injured person disabled?\_\_\_\_\_ days. 15. How long off duty?\_\_\_\_\_ days.
16. What statement, if any, has injured person made?\_\_\_\_\_
17. Give accurate description of injury\_\_\_\_\_
18. Where was injured person taken after accident? (If to a hospital, give name and address)\_\_\_\_\_ 19. Who furnished medicines? \_\_\_\_\_ Address \_\_\_\_\_
20. Name of attending physician?\_\_\_\_\_ Address \_\_\_\_\_
21. Date of accident \_\_\_\_\_ Hour of day\_\_\_\_\_M.
22. Place of accident\_\_\_\_\_, County of \_\_\_\_\_, Ohio, \_\_\_\_\_ 23. Give full details as to how accident happened \_\_\_\_\_ 24. Was accident caused by fault of fellow workman?\_\_\_\_\_ 25. Did accident happen on the premises, or at the plant, or in the course of employment, or away from the plant?\_\_\_\_\_ 26. If away from the plant, state when, how and by whom injured?\_\_\_\_\_
27. Was injured person acting under direction of foreman or superintendent? \_\_\_\_\_ 28. Names and addresses of witnesses:  
Name \_\_\_\_\_ Address \_\_\_\_\_  
Name \_\_\_\_\_ Address \_\_\_\_\_  
Name \_\_\_\_\_ Address \_\_\_\_\_
29. Was accident caused by fault of machines or devices?\_\_\_\_\_
30. Name of machine, device, etc., causing accident?\_\_\_\_\_ Its condition? \_\_\_\_\_ 31. Were all safeguards in their places at time of accident? 32. If any safeguard was removed, by whom was it removed?\_\_\_\_\_
34. Manager of said plant\_\_\_\_\_Address \_\_\_\_\_

---

the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

35. Foreman or superintendent in charge of department where deceased was injured: Name\_\_\_\_\_ Address \_\_\_\_\_

Witness: \_\_\_\_\_ Signed \_\_\_\_\_

Employer.

\_\_\_\_\_ By \_\_\_\_\_

(Name and official position of person making this report.)

### OATH.

State of Ohio, \_\_\_\_\_ County, ss:

Before me, a notary public in and for said county, on the\_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, personally appeared \_\_\_\_\_, who, first being duly sworn, declared that the facts set forth in the foregoing certificate, to which he has signed his name in my presence, are true.

(Seal.)

\_\_\_\_\_  
Notary Public.

My commission expires\_\_\_\_\_

### § 190. Form of certificate and oath of lay witness. (e)<sup>9</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of witness making this report\_\_\_\_\_Address\_\_\_\_\_
- What is your present occupation? \_\_\_\_\_
3. Name of employer\_\_\_\_\_Address \_\_\_\_\_
4. Are you related to injured person?\_\_\_\_\_In what way?\_\_\_\_\_
- What interest, if any, have you in this claim?\_\_\_\_\_
5. Name of injured\_\_\_\_\_Address\_\_\_\_\_
6. Age \_\_\_\_\_ Color \_\_\_\_\_ Nationality \_\_\_\_\_
7. What work was he engaged in when injured?\_\_\_\_\_ At what weekly wage? \$\_\_\_\_\_ 8. How long had he been doing this work?\_\_\_\_\_ 9. Was this his regular employment?\_\_\_\_\_
- If not, what was his regular employment?\_\_\_\_\_
10. Was he skilled in the work being done at time of accident?\_\_\_\_\_
11. Describe the injury\_\_\_\_\_ 12. Where did injured person go after accident?\_\_\_\_\_ 13. When did he return to work? \_\_\_\_\_
- Did he return to work as soon as he was able?\_\_\_\_\_
14. Give full details as to how accident occurred\_\_\_\_\_
15. What in your estimation, was the immediate cause of the injury? \_\_\_\_\_ 16. Was accident caused by fault of any fellow workman of injured person?\_\_\_\_\_ If so, give name and address. 17. Did accident happen on the premises, or at the plant, or in the course of his employment, or away from \_\_\_\_\_

---

<sup>9</sup>All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given. Fill out blank in ink, using pen or typewriter.

the plant? 18. If away from plant, state where and by whom he was injured?----- 19. Give names of two other witnesses:

Name ----- Address -----

Name ----- Address -----

20. Was accident caused by fault of machines or devices?-----

21. Name of machine, device, etc., causing accident-----

Its condition? -----

22. Were all safeguards in their places at time of accident?-----

23. If any safeguard was removed, by whom was it removed?-----

24. Manager of said plant:

Name ----- Address -----

25. Foreman or superintendent in charge of department where deceased was injured:

Name ----- Address -----

In the presence of:----- Signed -----

#### OATH.

State of Ohio, -----County, ss:

Before me, -----, a notary public in and for said county, on this \_\_\_\_day of-----, 191\_\_, personally appeared -----, who first being duly sworn, declared that the facts set forth in the foregoing certificate, which \_\_\_\_he signed in my presence, are true.

(Seal.)

----- Notary Public.

My commission expires-----

#### GROUP II.

#### FORMS WHERE DISABILITY IS TEMPORARY PARTIAL, TEMPORARY TOTAL OR PERMANENT PARTIAL.

§ 191. Formal procedure to obtain money to pay for medical, nurse and hospital services and medicines, with compensation.

A workman (or woman), who is covered by the act and whose injury does incapacitate him for a period longer than seven days, is entitled to be compensated from the state insurance fund for medical, nurse and hospital services and medicines in such amounts as the Board of Awards may deem proper, not, however, in any case to exceed the sum of two hundred dollars (\$200)

and in cases of temporary partial disability, temporary total disability, or permanent partial disability he is entitled to certain additional compensation based upon 66 and 2-3 per cent. of the impairment of his wages as set forth in sections 23, 25, 26 and 31 of the act.

The forms prescribed by the board in this group of cases are as follows: (a) Application for money to pay for expenses of sickness; (b) Employer's certificate and oath; (c) Physician's fee bill; (d) Druggist's cost bill; (e) Medical fee bill and hospital charges, and (f) Certificate and oath of lay witness. It is the duty of the official taking the acknowledgments to the various forms to see that the blanks are properly filled out and the acknowledgment is properly taken.

**§ 192. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)<sup>10</sup>**

State Liability Board of Awards, Columbus, Ohio.

I, \_\_\_\_\_, of \_\_\_\_\_

(Name of Applicant.)

(Post Office.)

\_\_\_\_\_, County of \_\_\_\_\_, State of Ohio,

(Street and Number)

do hereby make application for money to pay for medical, nurse and hospital services and medicines and for compensation for injuries received while in the employ of \_\_\_\_\_, whose plant is at \_\_\_\_\_, County of \_\_\_\_\_, State of Ohio.

---

<sup>10</sup> All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

Applications for awards in all cases of injury not resulting in death must be made by the party injured NOT LESS THAN TWO WEEKS NOR MORE THAN THREE MONTHS after the injury is received.

I have incurred for said services and medicines for treatment for the injury herein described the following bills:

Date.	To Whom Paid or Due.	Item.	Amount	Bills Paid (Yes or No)
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Age ----- Sex ----- Color ----- Place of birth-----  
 Married, single or divorced?----- Wife living?-----  
 How many children living?----- Their ages?-----  
 Which of them are dependent upon you for support?-----  
 To what degree is each dependent?-----
2. What weekly wage were you receiving at the time of injury?  
 ----- 3. How long had you been receiving such wages?  
 ----- 4. Have you any other income?----- If so, how  
 much and from what source derived?----- 5. What  
 work were you engaged in when injured?-----
6. How long had you been doing this work ----- 7. Was  
 this your regular employment?----- 8. If not, what was  
 your regular employment?-----
9. Have you ever received any other injury?----- If so, when,  
 where and what was its nature?-----
10. Have you had any recent sickness?----- If so, describe it and  
 give name of attending physician-----
11. Have you ever had a serious sickness?----- If so, what was  
 it, how long did it last, and who was attending physician?  
 -----
12. Were you in good health at time of this accident?-----
13. When did you enter employ of present employer?-----
14. With whom were you employed previous to this?-----
15. How long? ----- 16. Were you skilled in the labor being  
 performed when the injury happened?----- 17. When did  
 you return to work?----- 18. Were you able to take  
 up your regular employment?----- 19. Did you take up your  
 regular employment?----- At what daily wage?----- If  
 not, why not?----- And if not, what employment  
 did you take up?----- At what wage?-----
20. How soon will you be able to do the work you were doing when  
 injured and at the wages then received?-----
21. Is your new employment a temporary one or given you for tem-  
 porary convenience of yourself or employer, or is it a perma-  
 nent job? -----

22. What is the impairment of your earning capacity because of this injury alone? Answer: I am now able to earn \_\_\_\_\_ per cent. and no more, of the wages I was able to earn before this injury. This answer is based upon my actual disability and not upon wages I am now receiving.
23. Fill out this scale: Because of the injury herein mentioned, I was totally disabled for \_\_\_\_\_ days; \_\_\_\_\_ per cent. disabled for \_\_\_\_\_ days; and, \_\_\_\_\_ per cent. disabled for \_\_\_\_\_ days.
24. Describe the injury \_\_\_\_\_
25. Where did you go after accident? \_\_\_\_\_ 26. How many days were you disabled? \_\_\_\_\_ 27. Have you returned to work? \_\_\_\_\_ If not, when will you be able to return to work? \_\_\_\_\_ 28. When were you able to return to work? \_\_\_\_\_ 29. Did you return to work as soon as you were able? \_\_\_\_\_ Why? \_\_\_\_\_ 30. Name of attending physician \_\_\_\_\_ Address \_\_\_\_\_
31. Date of accident \_\_\_\_\_ Hour of day? \_\_\_\_\_ M.
32. State clearly the manner in which you were injured \_\_\_\_\_
33. Was accident caused by fault of fellow workman? \_\_\_\_\_
34. Did the accident happen on the premises, or at the plant, or in the course of your employment, or away from the plant of your employer? \_\_\_\_\_ 35. If away from the plant, state where, how and by whom injured \_\_\_\_\_
36. Were you acting under the direction of a superintendent? \_\_\_\_\_
37. Was accident caused by fault of machines or devices? \_\_\_\_\_
38. Name of machine, device, etc., causing accident \_\_\_\_\_ Condition? \_\_\_\_\_ 39. Were all safeguards in their places at the time you were hurt? \_\_\_\_\_ 40. If any safeguard was removed, did you remove it or was it removed by any of your fellow workmen, or superintendent or foreman? \_\_\_\_\_
41. Name of manager of said plant \_\_\_\_\_ Address \_\_\_\_\_
42. Name of foreman or superintendent in charge of the department in which I was injured \_\_\_\_\_ Address \_\_\_\_\_
43. Names of three witnesses who witnessed the accident:  
 Name \_\_\_\_\_ Address \_\_\_\_\_  
 Name \_\_\_\_\_ Address \_\_\_\_\_  
 Name \_\_\_\_\_ Address \_\_\_\_\_
44. Have you previously received any compensation from the State Insurance Fund? \_\_\_\_\_ If so, when and how much? \_\_\_\_\_
45. Do you carry any accident insurance? \_\_\_\_\_ If so, how much and in what companies? \_\_\_\_\_ 46. Are you a member of any lodge? \_\_\_\_\_ If so, what lodge or lodges? \_\_\_\_\_

Witness: \_\_\_\_\_ (Signed) \_\_\_\_\_

OATH.

State of Ohio, \_\_\_\_\_ County, ss:

Before me, a notary public in and for said county, on this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, personally appeared \_\_\_\_\_, the above named applicant, who, first being duly sworn, declares that the facts set forth in the foregoing application are true.

(Seal.)

My commission expires \_\_\_\_\_

§ 193. Form of employer's certificate and oath. (b)<sup>11</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer \_\_\_\_\_ Address \_\_\_\_\_
2. Nature of business \_\_\_\_\_
3. Name of injured \_\_\_\_\_ Address \_\_\_\_\_
4. Age \_\_\_\_\_ Sex \_\_\_\_\_ Color \_\_\_\_\_ Place of birth \_\_\_\_\_  
Married, single, or divorced? \_\_\_\_\_ Wife or husband living? \_\_\_\_\_ How many children living? \_\_\_\_\_ Their ages? \_\_\_\_\_ Which of them are dependent upon injured person for support? \_\_\_\_\_ To what degree is each dependent? \_\_\_\_\_
5. What weekly wage was he receiving at time of injury? \_\_\_\_\_
6. How long had he been receiving such wages? \_\_\_\_\_ 7. What work was he engaged in when injured? \_\_\_\_\_ 8. How long had he been doing this work? \_\_\_\_\_ 9. Was this his regular employment? \_\_\_\_\_ If not, what was his regular employment? \_\_\_\_\_ 10. Was he skilled in the labor being performed when injury happened? \_\_\_\_\_ 11. When did he enter your employment? \_\_\_\_\_ 12. How long have you known him? \_\_\_\_\_ 13. With whom was he employed previous to this? \_\_\_\_\_ Address \_\_\_\_\_ How long? \_\_\_\_\_
14. What statement, if any, has injured person made? \_\_\_\_\_
15. Has he ever laid off for sickness? \_\_\_\_\_ If so, for how long a time and what was his habit in this respect? \_\_\_\_\_
16. Has injured person returned to work? \_\_\_\_\_ 17. How long was he disabled? \_\_\_\_\_ How long off duty? \_\_\_\_\_
18. If still off duty, when in your estimation, will he be able to re-

<sup>11</sup> All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.



- turn to work?----- 19. When did he return to work?  
----- 20. Was he able to take up his regular employ-  
ment?----- If not, why not?----- If not, what em-  
ployment did he take up?----- 21. At what weekly  
wage?----- 22. How soon will he be able to do the work  
he was doing when injured and at the wage then received?-----
23. Was his new employment a temporary one or given him for  
temporary convenience, or is it a permanent job?-----
24. What was the impairment of his earning capacity because of  
this injury alone? Answer: He is now able to earn-----  
per cent. and no more, of the wages he was able to earn before  
this injury. This answer is based upon his actual disability,  
and not upon the wages he is now receiving.
25. Fill out this scale: Because of the injury herein mentioned,  
said injured person has been totally disabled for ----- days;  
-----% disabled for-----days; -----% disabled for-----days;  
-----% disabled for-----days; and in my estimation he will be  
-----% disabled for-----days longer. 26. Did he return to  
work as soon as he was able?----- 27. Give accurate descrip-  
tion of injury -----
28. Where was injured person taken after accident? (If to a hos-  
pital, give name and address)-----
29. Who furnished medicines?-----Address -----
30. Names of attending physicians:  
Name -----Address -----  
Name -----Address -----
31. Date of accident-----Hour of day-----M.
32. Place of accident: P. O.-----, Street and No.-----  
County of-----, Ohio, -----Building
33. Give full details as to how accident happened-----
34. Was accident caused by fault of fellow workman?-----
35. Did accident happen on the premises, or at the plant, or in  
the course of employment, or away from plant?-----
36. If away from plant, state when, how and by whom injured?  
-----
37. Was injured person acting under direction of a superintendent?  
----- 38. Names and addresses of witnesses:  
Name -----Address -----  
Name -----Address -----  
Name -----Address -----
39. Was accident caused by fault of machines or devices?-----
40. Name of machine, device, etc., causing accident?-----  
Condition ----- 41. Were all safeguards in their  
places at time of accident?----- 42. If any safeguard was  
removed, by whom was it removed?-----
43. Manager of said plant:----- Address -----

44. Foreman or superintendent in charge of department where deceased was injured:

----- Address -----  
 Witness: Signed -----

Employer.

By -----  
 (Name and official position of  
 person making this report.)

OATH.

State of Ohio, ----- County, ss:

Before me, a notary public in and for said county, on the-----  
 day of -----, 191--, personally appeared-----,  
 who, first being duly sworn, declared that the facts set forth in the  
 foregoing certificate, to which he has signed his name in my pres-  
 ence, are true.

(Seal.)

-----  
 Notary Public.

My commission expires-----

§ 194. Form of physician's fee bill. (c)

The following is an itemized account of professional services  
 rendered in connection with the treatment of injury to-----  
 (Name of patient.)

of ----- together with charges therefor:  
 (Full address of patient.)

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

-----  
 (Signature of Affiant.)

OATH.

State of Ohio, ----- County, ss:

-----, being first duly cautioned and sworn,  
 says that he treated the injury to the above named person and that  
 his services were required and furnished on account of the purpose  
 above mentioned, and the same were necessary therefor, and that  
 the charges are reasonable and not more than he charges for like  
 services in other instances.

Sworn to before me and subscribed in my presence, this-----  
 day of -----, 191--.

(Seal.)

-----  
 Notary Public.

My commission expires-----

### § 195. Form of druggist's cost bill. (d)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to

-----, of -----

(Name of patient.)

(Full address of patient.)

together with charges therefor:

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

-----  
(Signature of Affiant.)

#### OATH.

State of Ohio, -----County, ss:

-----, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this-----day of-----, 191---

-----  
Notary Public.

(Seal.)

My commission expires-----

### § 196. Form of medical fee bill and hospital charges. (e)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to

----- of -----

(Name of patient.)

(Full address of patient.)

together with charges therefor:

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

-----  
(Signature of Affiant.)

OATH.

State of Ohio, \_\_\_\_\_ County, ss:  
 \_\_\_\_\_, being first duly cautioned and sworn,  
 says that \_\_\_\_\_ is \_\_\_\_\_ of \_\_\_\_\_,  
 (Official position.) (Name of hospital.)  
 of \_\_\_\_\_, and as such duly authorized in the premises;  
 (Address.)

that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefore, and that the charges are reasonable and not more than is charged by affiant for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_.

\_\_\_\_\_  
 Notary Public.

(Seal.) My commission expires \_\_\_\_\_

§ 197. Form of certificate and oath of lay witness. (f)<sup>12</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of witness making this report \_\_\_\_\_ Address \_\_\_\_\_  
 What is your present occupation? \_\_\_\_\_
2. Name of your employer? \_\_\_\_\_ Address \_\_\_\_\_
3. Are you related in any way to injured person? \_\_\_\_\_ If so,  
 in what way? \_\_\_\_\_ What interest, if any, have you in this  
 claim? \_\_\_\_\_
4. Name of injured person \_\_\_\_\_ Address \_\_\_\_\_
5. Age \_\_\_\_ Color \_\_\_\_ Nationality \_\_\_\_ Married,  
 single or divorced? \_\_\_\_\_ Wife or husband living? \_\_\_\_\_  
 How many children living? \_\_\_\_\_ Their ages? \_\_\_\_\_  
 To what degree are each dependent? \_\_\_\_\_
6. What weekly wage was he receiving at time of injury? \_\_\_\_\_
7. How long had he been receiving such wages? \_\_\_\_\_ 8. Has  
 he any other source of income? \_\_\_\_\_ If so, how much and  
 from what source derived? \_\_\_\_\_ 9. What work was  
 he engaged in at time of accident? \_\_\_\_\_ 10. How long  
 had he been doing this work? \_\_\_\_\_ 11. Was this his regu-  
 lar employment? \_\_\_\_\_ If not, what was his regular em-  
 ployment? \_\_\_\_\_ 12. Was he skilled in the work being  
 done at time of accident? \_\_\_\_\_ 13. Has he ever received  
 any other injury to your knowledge? \_\_\_\_\_ If so, when, where

---

<sup>12</sup>All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given.

Fill out blank in ink, using pen or typewriter.

- and what was its nature?----- 14. Has he ever had any serious sickness to your knowledge?----- If so, what was it and how long did it last?----- 15. Has he had any recent sickness to your knowledge?----- If so, what was it and how long did it last?----- 16. Was he in good health at time of accident?----- 17. When did he return to work?----- Was he able to take up his regular employment?----- If not, why not?----- And what employment did he take up?----- At what weekly wage?----- 18. When will he be able to take up the work he was doing at time of injury?----- 19. What, in your estimation, is the impairment of his earning capacity because of this injury alone? Answer: He is now able to earn----- per cent., and no more, of the wages he was able to earn prior to this injury. This answer is based upon his actual disability and not upon wages he is now receiving.
20. Was deceased a member of any lodge?----- If so, what lodge or lodges?----- Did deceased carry any accident insurance? ----- If so, how much and in what companies?-----

#### INJURY.

21. Describe the injury -----
22. Where did injured person go after accident?-----
23. Who was attending physician:  
Name ----- Address -----
24. Who furnished medicines:  
Name ----- Address -----

#### ACCIDENT.

25. Give full details as to how accident occurred?-----
26. What, in your estimation, was the immediate cause of the injury? -----
27. Was accident caused by fault of fellow workman of injured person? ----- If so, give name----- Address-----
28. Did accident happen on the premises, or at the plant, or in the course of his employment, or away from the plant?-----
29. If away from the plant, state where and by whom he was injured?----- 30. Give names of two other witnesses:  
Name ----- Address -----  
Name ----- Address -----

#### MACHINERY.

31. Was accident caused by fault of machines or devices?-----
32. Name of machine, device, etc., causing accident-----  
Condition ----- 33. Were all safeguards in their places

at time of accident?----- 34. If any safeguard was removed,  
by whom was it removed?----- Address-----

35. Manager of said plant:

Name ----- Address -----

36. Foreman or superintendent in charge of department where deceased was injured:

Name ----- Address -----

In the presence of:

----- Signed -----

OATH.

State of Ohio, ----- County, ss:

Before me, -----, a notary public in and for said county, on this \_\_\_\_ day of -----, 191\_\_\_\_, personally appeared ----- who, first being duly sworn, declared that the facts set forth in the foregoing certificate, which --he signed in my presence, are true.

(Seal.)

-----

Notary Public.

My commission expires-----

GROUP III.

FORMS IN CASES OF PERMANENT TOTAL DISABILITY.

§ 198. Formal procedure to obtain compensation in case of permanent total disability.

In cases of permanent total disability the workman is entitled to compensation for medical, nurse and hospital services and medicines in such amounts as the board may deem proper, not however in any case to exceed the sum of two hundred dollars (\$200), and is entitled in addition thereto to compensation at the rate of 66 and 2-3 per cent. of the impairment of his average weekly wage as long as total disability lasts, as made and provided in sections 23 and 27 of the act.

The forms prescribed in this group of cases are: (a) Application for money to pay for medical, nurse and hospital services and medicine, with compensation; (b) employer's certificate and oath; (c) physician's fee bill; (d) druggist's cost bill; (e) medical fee bill and hospital charges, and (f) certificate and oath of lay witness. It

§ 199. Form of application for money to pay for medical, nurse and hospital services and medicines, with compensation. (a)<sup>13</sup>

I have incurred for said services and medicines for treatment for the injury herein described the following bills:

Date	To Whom Paid or Due	Item	Amount	Bill Paid (Yes or No)
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

1. Age ----- Sex ----- Color ----- Place of birth?-----  
 Married, single or divorced?----- Wife or husband living?  
 ----- How many children living?----- Their ages?-----  
 Which of them are dependent upon you for support?-----

Applications for awards in all cases of injury not resulting in death must be made by the party injured NOT LESS THAN TWO WEEKS NOR MORE THAN THREE MONTHS after the injury is received.

To what degree is each dependent?-----

2. What weekly wage were you receiving at time of injury?-----
3. How long had you been receiving such wages?-----
4. Have you any other income?----- If so, how much and from what source derived?-----
5. What work were you engaged in when injured?-----
6. How long had you been doing this work?-----
7. Was this your regular employment?-----
8. If not, what was your regular employment?-----
9. Have you ever received any other injury? ----- If so, when, where, and what was its nature?-----
10. Have you had any recent sickness?----- If so, describe it and give name of attending physician -----
11. Have you ever had a serious sickness?----- If so, what was it, how long did it last, and who was attending physician?-----
12. Were you in good health at the time of this accident?-----
13. When did you enter employ of present employer?-----
14. With whom were you employed previous to this?-----
15. How long?-----
16. Were you skilled in the labor being performed when the injury was sustained?-----
17. Did permanent total disability ensue immediately after injury was sustained?-----
18. If not, when did permanent total disability ensue?-----
19. Did you return to work before permanent total disability ensued?----- When?----- How long did you work?----- At what weekly wage?-----
20. What impairment of earning capacity resulted from injury and lasted through the period last mentioned?-----

#### INJURY.

21. Describe the injury-----
22. Where did you go after accident?-----
23. Names of attending physicians:  
 Name ----- Address -----  
 Name ----- Address -----

#### ACCIDENT.

24. Date of accident----- Hour of day-----M.
25. State clearly the manner in which you were injured-----
26. Was accident caused by fault of fellow workmen?-----
27. Did accident happen on the premises, or at the plant, or in the course of your employment, or away from the plant of your employer?-----
28. If away from the plant, state when, how and by whom injured-----
29. Were you acting under the direction of a superintendent or foreman? -----



## MACHINERY.

30. Was accident caused by fault of machines or devices?-----  
 31. Name of machine, device, etc., causing accident?-----  
 Condition? ----- 32. Were all safeguards in their  
 places at the time you were hurt?----- 33. If any safeguard  
 was removed, did you remove it or was it removed by any of  
 your fellow workmen, or superintendent or foreman?-----  
 34. Name of manager of said plant-----Address-----  
 35. Name of foreman or superintendent in charge of the department  
 in which injury was sustained----- Address-----  
 36. Names of three witnesses who witnessed the accident:  
 Name ----- Address -----  
 Name ----- Address -----  
 Name ----- Address -----  
 37. Have you previously received any compensation from the State  
 Insurance Fund?----- If so, when and how much?-----  
 38. Do you carry any accident insurance?----- If so, how much  
 and in what companies?----- 39. Are you a mem-  
 ber of any lodge?----- If so, what lodge or lodges?-----  
 Witness: ----- (Signed) -----

## OATH.

State of Ohio, ----- County, ss:

Before me, a notary public, in and for said county, on this-----  
 day of -----, 191--, personally appeared-----,  
 the above named claimant, who, being first duly sworn, declared that  
 the facts set forth in the foregoing application are true.  
 (Seal.) -----

Notary Public.

My commission expires-----

(Following oath to be made by person representing claimant  
 because of the latter's disability and consequent inability to make  
 application in person.)

## OATH.

State of Ohio, ----- County, ss:

Before me, a notary public in and for said county, on this-----  
 day of -----, 19--, personally appeared-----,  
 representing the above named claimant, who first being duly sworn,  
 declared that -----, the above named claimant, is physi-  
 cally unable to make this application in person and that he therefore  
 acts in this representative capacity by authority-----, and  
 he further declared that the facts set forth in the foregoing applica-  
 tion are true.  
 (Seal.) -----

Notary Public.

My commission expires-----

# § 200. Form of employer's certificate and oath. (b)<sup>14</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer ----- 2. Nature of business-----
3. Name of injured----- Address-----
4. Age ----- Sex ----- Color ----- Place of birth-----  
Married, single, or divorced?----- Wife or husband living?  
----- How many children living?----- Their ages?-----  
Which of them are dependent upon injured person for support?  
----- To what degree is each dependent?-----
5. What weekly wage was he receiving at time of injury?-----
6. How long had he been receiving such wages?----- 7. What  
work was he engaged in when injured?----- 8. How long  
had he been doing this work?----- 9. Was this his  
regular employment?----- If not, what was his regular  
employment? ----- 10. Was he skilled in the labor  
being performed when injury happened?----- 11. When did  
he enter your employment?----- 12. With whom was he  
employed previous to this?----- How long?-----
13. What statement, if any, has injured person made?-----
14. Has he ever laid off for sickness?----- If so, for how long a  
time and what was his habit in this respect?-----
15. Did permanent disability ensue immediately after injury was  
sustained?----- If not, when did permanent disability ensue?  
----- 16. Did injured person return to work before  
permanent disability ensued?----- When?----- How  
long did he work?----- At what weekly wage?-----
17. What impairment of earning capacity resulted from injury and  
lasted through period last mentioned? Answer: He was able  
to earn----- per cent., and no more, of his former wage.  
This statement is based upon his actual disability.
18. Give accurate description of injury-----
19. Where was injured person taken after accident? (If to a hos-  
pital give name and address)----- 20. Who furnished  
medicines? ----- Address -----

---

<sup>14</sup> All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

21. Names of attending physicians:  
 Name ----- Address -----  
 Name ----- Address -----
22. Date of accident ----- Hour of day ----- M.
23. Place of accident: P. O. -----, Street and No. -----  
 County of -----, Ohio, ----- Building
24. Give full details as to how accident happened -----
25. Was accident caused by fault of fellow workman? -----
26. Did accident happen on the premises, or at the plant, or in the  
 course of employment, or away from plant? ----- 27. If  
 away from the plant, state when, how and by whom injured?  
 -----
28. Was injured person acting under direction of a superintendent?  
 ----- 29. Names and addresses of witnesses:  
 Name ----- Address -----  
 Name ----- Address -----  
 Name ----- Address -----
30. Was accident caused by fault of machines or devices? -----
31. Name of machine, device, etc., causing accident? -----  
 Condition? ----- 32. Were all safeguards in their  
 places at time of accident? ----- 33. If any safeguard was re-  
 moved, by whom was it removed? -----
34. Manager of said plant ----- Address -----
35. Foreman or superintendent in charge of department where de-  
 ceased was injured:  
 Name ----- Address -----
- Witness: ----- Signed -----

Employer.

By -----  
 (Name and official position of  
 person making this report.)

## OATH.

State of Ohio, ----- County, ss:

Before me, a notary public in and for said county, on the -----  
 day of -----, 191--, personally appeared -----,  
 who, first being duly sworn, declared that the facts set forth in the  
 foregoing certificate, to which he has signed his name in my pres-  
 ence, are true.

(Seal.)

-----  
 Notary Public.

My commission expires -----

### § 201. Form of physician's fee bill. (c)

The following is an itemized account of professional services rendered in connection with the treatment of injury to \_\_\_\_\_

(Name of patient.)

of \_\_\_\_\_ together with charges therefor:

(Full address of patient.)

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_  
(Signature of Affiant.)

### OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than the charges for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_.

(Seal.)

\_\_\_\_\_  
Notary Public.

My commission expires \_\_\_\_\_

### § 202. Form of druggist's cost bill. (d)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to \_\_\_\_\_, of \_\_\_\_\_, together with charges

(Name of patient.) (Full address of patient.)

therefor:

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_  
(Signature of Affiant.)

## OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191---

\_\_\_\_\_  
Notary Public.

(Seal.)

My commission expires \_\_\_\_\_

### 203. Form of medical fee bill and hospital charges. (e)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to \_\_\_\_\_, of \_\_\_\_\_, together with

(Name of patient.)

(Full address of patient.)

charges therefor:

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_  
(Signature of Affiant.)

## OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that \_\_\_\_\_ is \_\_\_\_\_ of \_\_\_\_\_,

(Official position.)

(Name of hospital.)

of \_\_\_\_\_, and as such duly authorized in the premises;  
(Address.)

that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than is charged by affiant for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191---

\_\_\_\_\_  
Notary Public.

(Seal.)

My commission expires \_\_\_\_\_

§ 204. Form of certificate and oath of lay witness (f).<sup>15</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of witness making this report\_\_\_\_\_ Address\_\_\_\_\_ What is your present occupation?\_\_\_\_\_
2. Name of employer\_\_\_\_\_ Address\_\_\_\_\_
3. Are you related in any way to injured person?\_\_\_\_\_ If so, in what way \_\_\_\_\_ What interest have you in this claim?\_\_\_\_\_
4. Name of injured person\_\_\_\_\_ Address\_\_\_\_\_
5. Age \_\_\_\_\_ Color \_\_\_\_\_ Nationality \_\_\_\_\_ Married, single or divorced? Wife or husband living?\_\_\_\_\_ How many children living?\_\_\_\_\_ Their ages \_\_\_\_\_ To what degree are each dependent? \_\_\_\_\_ 6. What weekly wage was he receiving at time of injury?\_\_\_\_\_ 7. How long had he been receiving such wages?\_\_\_\_\_ 8. Has he any other source of income?\_\_\_\_\_ If so, how much and from what source derived? \_\_\_\_\_ 9. What work was he engaged in at time of accident? \_\_\_\_\_ 10. How long had he been doing this work?\_\_\_\_\_ 11. Was this his regular employment?\_\_\_\_\_ If not, what was his regular employment?\_\_\_\_\_ 12. Was he skilled in the work being done at time of accident?\_\_\_\_\_
13. Has he ever received any other injury to your knowledge?\_\_\_\_\_ If so, when, where and what was its nature?\_\_\_\_\_
14. Has he ever had any serious sickness to your knowledge?\_\_\_\_\_ If so, what was it and how long did it last?\_\_\_\_\_
15. Has he had any recent sickness to your knowledge?\_\_\_\_\_ If so, what was it and how long did it last?\_\_\_\_\_ 16. Was he in good health at time of accident?\_\_\_\_\_ 17. Did permanent total disability ensue immediately after injury was sustained?\_\_\_\_\_ If not, when did permanent total disability ensue?\_\_\_\_\_ 18. Did he return to work before permanent total disability ensued?\_\_\_\_\_ When?\_\_\_\_\_ How long did he work?\_\_\_\_\_ At what weekly wage?\_\_\_\_\_ 19. What impairment of earning capacity resulted from injury and lasted through the period last mentioned? Answer: He was able to earn\_\_\_\_\_ per cent., and no more, of the wage he was earning when injured.
20. Was deceased a member of any lodge?\_\_\_\_\_ If so, what lodge or lodges?\_\_\_\_\_ Did deceased carry any accident insurance?\_\_\_\_\_ If so, how much and in what companies?\_\_\_\_\_
21. Describe the injury\_\_\_\_\_

---

<sup>15</sup>All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given. Fill out blank in ink, using pen or typewriter.

22. Where did injured person go after accident?-----  
 23. Names of attending physicians:   
     Name ----- Address -----  
 24. Date of accident?----- Hour of day?-----M.  
 25. Give full details as to how accident occurred?-----  
 26. What, in your estimation, was the immediate cause of the  
     injury?----- 27. Was accident caused by fault of any  
     fellow workman of injured person ----- If so, give name  
     ----- Address -----  
 28. Did accident happen on the premises, or at the plant, or in the  
     course of his employment, or away from the plant?-----  
 29. If away from the plant, state where and by whom he was  
     injured? ----- 30. Give names of two other witnesses:  
     Name ----- Address -----  
     Name ----- Address -----  
 31. Was accident caused by fault of machines or devices?-----  
 32. Name of machine, device, etc., causing accident-----  
     Condition ----- 33. Were all safeguards in their places  
     at time of accident?----- 34. If any safeguard was removed,  
     by whom was it removed?-----  
 35. Manager of said plant:----- Address -----  
 36. Foreman or superintendent in charge of department where de-  
     ceased was injured: ----- Address -----  
 In the presence of:----- Signed -----

## OATH.

State of Ohio,-----County, ss:

Before me, -----, a notary public in and for said  
 county, on this \_\_\_\_ day of-----, 191\_\_\_\_, personally appeared  
 ----- who, first being duly sworn, declared that the  
 facts set forth in the foregoing certificate, which \_\_\_\_he signed in  
 my presence, are true.

(Seal.) -----

Notary Public.

My commission expires-----

## GROUP IV.

## FORMS IN CASES OF DEATH WITHOUT DEPENDENTS.

§ 205. Forms to obtain money to pay for medical,  
 hospital and funeral expenses only.

Where a workman (or woman) covered by the act  
 receives an injury causing death within two years after  
 the accident and leaves no dependents, then the disburse-

ments that shall be made on account of such an accident shall be limited to any sum not to exceed two hundred dollars (\$200) for medical, hospital and nurse services and medicines, and to any sum not to exceed one hundred and fifty dollars for funeral expenses, as the Liability Board of Awards may deem proper. See § 28, par. 1, 23 and 24 of the act.

In this group of cases the forms to be filled out and filed with the board are: (a) Application for money paid for medical, nurse and hospital services and medicines and for funeral expenses; (b) undertaker's certificate of death and cost bill; (c) witness's certificate in proof of death; (d) physician's certificate of death; (e) employer's certificate and oath; (f) physician's fee bill; (g) druggist's cost bill; (h) medical fee bill and hospital charges, and (i) certificate and oath of lay witness. It is the duty of the officer taking the acknowledgment to see that the blanks are properly filled and the acknowledgment properly taken.

**§ 206. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses, without award. (a)<sup>16</sup>**

State Liability Board of Awards,

Columbus, Ohio,

I, \_\_\_\_\_ of \_\_\_\_\_

(Name of Applicant)

(Post Office)

\_\_\_\_\_, County of \_\_\_\_\_, State of Ohio.

(Street and Number)

<sup>16</sup>All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Application for awards in all cases of injury resulting in death must be made by the executor or administrator or beneficiary of the deceased, or by the attending physician or undertaker where there is no beneficiary, NOT LESS THAN TWO WEEKS NOR MORE THAN SIX MONTHS after the death of the injured employé.

Fill out blank in ink, using pen or typewriter.



do hereby make application for money to pay for medical, nurse and hospital services and medicines and for funeral expenses for \_\_\_\_\_ of \_\_\_\_\_, State of Ohio, who was \_\_\_\_\_

(Killed or Injured)

while in the employ of \_\_\_\_\_ whose plant is situated at \_\_\_\_\_, County of \_\_\_\_\_, State of Ohio, and who died at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

My relation to deceased is \_\_\_\_\_

The reasons why this application is made by me and not by another are: \_\_\_\_\_

(Answer must be full and complete)

There has been incurred for said services and medicines for treatment for the injury herein described and for funeral expenses the following bills:

Date	To whom Paid or Due	Item	Amount	Bills Paid (Yes or No)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Age? \_\_\_\_\_ Sex \_\_\_\_\_ Color? \_\_\_\_\_ Place of birth? \_\_\_\_\_ Married, single or divorced? \_\_\_\_\_ Wife or husband living? \_\_\_\_\_ How many children living? \_\_\_\_\_ Their ages? \_\_\_\_\_  
DECEASED HAD NO DEPENDENTS.
2. What weekly wage was deceased receiving at the time of injury? \$ \_\_\_\_\_
3. How long had deceased been receiving such wages \_\_\_\_\_
4. Had deceased any other income? \_\_\_\_\_ If so, how much and from what source derived? \_\_\_\_\_
5. What work was deceased engaged in when injured? \_\_\_\_\_
6. How long had deceased been doing this work? \_\_\_\_\_
7. Was this his regular employment? \_\_\_\_\_
8. If not, what was his regular employment? \_\_\_\_\_
9. When did deceased enter employment of present employer? \_\_\_\_\_
10. With whom was he employed previous to this? Name \_\_\_\_\_ Address \_\_\_\_\_
11. How long? \_\_\_\_\_
12. Was deceased skilled in the labor performed when injury was sustained? \_\_\_\_\_
13. How long did disability caused by injury last before death ensued? \_\_\_\_\_
14. State if there was partial recovery and how long it lasted \_\_\_\_\_
15. Did deceased return to work? \_\_\_\_\_
16. How long did \_\_\_\_\_

- deceased remain at work?----- 17. At what weekly wage? -----
18. When at work he was able to earn-----per cent. of the wages received before injury, and no more. This statement is based upon decedent's actual earning capacity, and not merely upon wages received. 19. Did deceased receive any compensation from the State Insurance Fund?----- 20. How much?----- 21. Describe the injury which caused death of deceased.-----
- 
22. Where was deceased taken after accident?-----
23. Names of attending physicians:  
 Name----- Address-----  
 Name----- Address-----
24. Name of undertaker----- Address-----
25. Who furnished medicines?----- Address-----
26. Date of accident----- Hour of day-----M.
27. State clearly the manner in which accident occurred-----
- 
28. Was accident caused by fault of fellow workman?-----
29. Did accident happen on the premises, or at the plant, or in the course of employment of deceased, or away from the plant of the employer?----- 30. If away from the plant, state when, how and by whom injured -----
- 
31. Was deceased acting under direction of a superintendent?-----
- 
31. Was accident caused by fault of machines or devices?-----
32. Name of machine, device, etc., causing accident?-----  
 Condition -----
33. Were all safeguards in their places at the time deceased was hurt? -----
34. If any safeguard was removed, did deceased remove it or was it removed by any fellow workman of deceased, or superintendent or foreman?-----
35. Name of manager of said plant----- Address-----
36. Name of foreman or superintendent in charge of department in which deceased was injured-----  
 Address -----
37. Name of three witnesses who witnessed the accident:  
 Name----- Address-----  
 Name----- Address-----  
 Name----- Address-----
38. Was deceased a member of any lodge?----- If so, what

lodge or lodges?----- 39. Did deceased carry any accident insurance?----- If so, how much and in what companies? -----

Witness:

(Signed)-----

### OATH.

State of Ohio, ----- County, ss:

Before me, a notary public in and for said county, on this----- day of-----, 191--, personally appeared-----, the above named applicant, who being duly sworn, declared that the facts set forth in the foregoing application are true.

Notary Public.

(Seal)

My commission expires-----

## § 207. Form of undertaker's certificate of death and cost bill. (b)

State of Ohio, ----- County, ss:

-----, of-----,  
(Name of undertaker.)

says that he is a duly licensed undertaker of-----, Ohio, at -----; that as such he was required on  
(Street and number.)

the-----day of-----, 191--, to prepare the dead body of-----for burial; that he placed said body in a coffin and placed said coffin, containing the said body, in a----- in ----- cemetery at -----, State of-----.

Affiant further says that the following is a true and accurate account of articles furnished and services rendered in connection with the preparation and burial of said body, and the charges therefor; that such articles and services were required and furnished on account of the purpose above mentioned and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

(Signature of Affiant.)

OATH.

Sworn to before me and subscribed in my presence, this\_\_\_\_\_ day of\_\_\_\_\_, 191\_\_

Notary Public.

(Seal.)

My commission expires\_\_\_\_\_

§ 208. Form of lay witness's certificate in proof of death. (c)

1. Name of deceased in full\_\_\_\_\_ Sex\_\_\_\_\_Color\_\_\_\_\_
2. How long have you known the deceased \_\_\_\_\_
3. (a) Age at death\_\_\_\_\_years. (b) Names and ages of children \_\_\_\_\_
4. Place of death (Give street number, city or town, and state): Street\_\_\_\_\_City or town\_\_\_\_\_State\_\_\_\_\_
5. (a) Occupation at the time of death\_\_\_\_\_ (b) Nationality \_\_\_\_\_
6. Date when you first saw deceased after injury\_\_\_\_\_
7. Date when you last saw deceased after injury\_\_\_\_\_
8. Date of death\_\_\_\_\_
9. (a) What caused death?\_\_\_\_\_ (b) How long after injury?\_\_\_\_\_
10. Did you see the body of the deceased and did you identify it as that of the injured workman at\_\_\_\_\_ while in the employ of\_\_\_\_\_ of \_\_\_\_\_
11. Was a coroner's inquest held \_\_\_\_\_Name of coroner\_\_\_\_\_ Address \_\_\_\_\_
12. What physician attended deceased? Name\_\_\_\_\_ Address\_\_\_\_\_ Name\_\_\_\_\_ Address\_\_\_\_\_
13. Was health of deceased impaired by intemperance or any pernicious habit?\_\_\_\_\_If so, what?\_\_\_\_\_
14. Have you any interest in this claim?\_\_\_\_\_
15. Have you stated all the material facts connected in any way with this death?\_\_\_\_\_
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?\_\_\_\_\_ Dated this\_\_\_\_\_day of\_\_\_\_\_, 191\_\_

Attending Physician.

## OATH.

State of Ohio, \_\_\_\_\_ County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 191\_\_\_\_, personally appeared before me, the above named \_\_\_\_\_, physician in regular standing, and made oath that the answers by him above made and subscribed are true.

\_\_\_\_\_  
Notary Public.

My commission expires \_\_\_\_\_

### § 209. Form of physician's certificate in proof of death. (d)<sup>17</sup>

1. Name of the deceased in full \_\_\_\_\_  
Sex \_\_\_\_\_ Color \_\_\_\_\_
2. (a) How long have you known the deceased \_\_\_\_\_  
(b) How long have you been medical adviser of deceased? \_\_\_\_\_
3. (a) Age at death \_\_\_\_\_ years. (b) Married or single \_\_\_\_\_  
(c) Names and ages of children \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Place of death (Give street number, city or town, and state):  
Street \_\_\_\_\_ City or town \_\_\_\_\_ State \_\_\_\_\_
5. (a) Occupation at the time of death \_\_\_\_\_  
(b) Nationality \_\_\_\_\_
6. Date of your first visit or prescription \_\_\_\_\_
7. Date of your last visit \_\_\_\_\_
8. Date of death \_\_\_\_\_
9. (a) State the remote cause of death \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(b) State explicitly the immediate cause of death \_\_\_\_\_
10. Did you see the body of the deceased and did you identify it as that of the injured workman at \_\_\_\_\_  
while in the employ of \_\_\_\_\_, of \_\_\_\_\_?
11. Was a coroner's inquest held? \_\_\_\_\_ Name of coroner \_\_\_\_\_  
Address \_\_\_\_\_
12. Was deceased attended by any other physician during last illness? If so, state his name and address \_\_\_\_\_
13. Was health of deceased impaired by intemperance or any pernicious habit? \_\_\_\_\_ If so, what? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
14. Have you any interest in this claim? \_\_\_\_\_

<sup>17</sup>To be filled out by the attending physician of deceased.

Fill in all blanks with ink, using pen or typewriter.

15. Have you stated all the material facts connected in any way with this death?\_\_\_\_\_
  16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?\_\_\_\_\_
- Dated this\_\_\_\_\_day of\_\_\_\_\_, 191\_\_
- \_\_\_\_\_

\_\_\_\_\_  
Attending Physician.

Degree?\_\_\_\_\_ Year\_\_\_\_\_ College\_\_\_\_\_

# OATH.

State of Ohio, \_\_\_\_\_ County, ss:

On this\_\_\_\_\_ day of\_\_\_\_\_, A. D. 191\_\_, personally appeared before me, the above named\_\_\_\_\_, physician in regular standing, and made oath that the answers by him above made and subscribed are true.

\_\_\_\_\_  
Notary Public.

My commission expires\_\_\_\_\_

## § 210. Form of employer's certificate and oath. (e)<sup>18</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer \_\_\_\_\_ Address \_\_\_\_\_
2. Nature of business \_\_\_\_\_
3. Name of deceased\_\_\_\_\_ 4. Age \_\_\_\_\_ Sex \_\_\_\_\_
- Color \_\_\_\_\_ Place of birth \_\_\_\_\_ How many children living \_\_\_\_\_ Their ages?\_\_\_\_\_
- DECEASED HAD NO DEPENDENTS.
5. What weekly wage was deceased receiving at time of injury? \_\_\_\_\_ 6. How long had he been receiving such wages? \_\_\_\_\_
7. What work was he engaged in when injured?\_\_\_\_\_
8. How long had he been doing this work?\_\_\_\_\_ 9. Was this his regular employment?\_\_\_\_\_ If not, what was his regular employment? \_\_\_\_\_
10. Was he skilled in the labor being performed when injury happened?\_\_\_\_\_ 11. When did he enter your employment? \_\_\_\_\_
12. With whom was he

<sup>18</sup> All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank in ink, using pen or typewriter.

- employed previous to this? Name \_\_\_\_\_  
 Address \_\_\_\_\_ How long \_\_\_\_\_
13. How long did disability caused by injury last before death ensued? \_\_\_\_\_ 14. State if there was partial recovery and how long it lasted? \_\_\_\_\_ 15. Did deceased return to work? \_\_\_\_\_ How long did he remain at work before death? \_\_\_\_\_ At what weekly wage? \_\_\_\_\_ 16. What impairment of earning capacity resulted from injury and lasted from date of return to work until death of deceased? Answer: He was able to earn \_\_\_\_\_ per cent., and no more, of his former wage.
17. Was deceased a member of any lodge? \_\_\_\_\_ If so, what lodge or lodges? \_\_\_\_\_ Did deceased carry accident insurance? \_\_\_\_\_ If so, how much and in what companies? \_\_\_\_\_
18. Give accurate description of injury which caused death \_\_\_\_\_
19. Where was deceased taken after accident? (If to a hospital, give name and address) \_\_\_\_\_ 20. Who furnished medicines? \_\_\_\_\_ Address \_\_\_\_\_
21. Names of standing physicians:  
 Name \_\_\_\_\_ Address \_\_\_\_\_  
 Name \_\_\_\_\_ Address \_\_\_\_\_
22. Name of undertaker \_\_\_\_\_ Address \_\_\_\_\_
23. Date of accident \_\_\_\_\_ Hour of day \_\_\_\_\_ M.
24. Place of accident, P. O. \_\_\_\_\_ Street and No. \_\_\_\_\_  
 County of \_\_\_\_\_, Ohio, \_\_\_\_\_ Building.
25. Give full details as to how accident happened \_\_\_\_\_
26. Was accident caused by fault of fellow workman? \_\_\_\_\_
27. Did accident happen on the premises, or at the plant, or in the course of employment, or away from plant? \_\_\_\_\_ 28. If away from plant, state when, how and by whom injured? \_\_\_\_\_
29. Names and addresses of witnesses:  
 Name \_\_\_\_\_ Address \_\_\_\_\_  
 Name \_\_\_\_\_ Address \_\_\_\_\_  
 Name \_\_\_\_\_ Address \_\_\_\_\_
30. Was accident caused by fault of machine or devices? \_\_\_\_\_
31. Name of machine, device, etc., causing accident \_\_\_\_\_  
 Condition \_\_\_\_\_ 32. Were all safeguards in their places at time of accident? \_\_\_\_\_ 33. If any safeguard was removed, by whom was it removed? \_\_\_\_\_ 34. Manager of said plant:  
 Name \_\_\_\_\_ Address \_\_\_\_\_
35. Foreman or superintendent in charge of department where deceased was injured:  
 Name \_\_\_\_\_ Address \_\_\_\_\_
- Witness: \_\_\_\_\_ Signed \_\_\_\_\_
- Employer.
- By \_\_\_\_\_
- (Name and official position of person making this report.)

OATH.

State of Ohio, \_\_\_\_\_ County, ss:

Before me, a notary public in and for said county, on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, personally appeared \_\_\_\_\_, who, first being duly sworn, declared that the facts set forth in the foregoing certificate, to which he has signed his name in my presence are true.

(Seal.)

\_\_\_\_\_  
Notary Public.

My commission expires \_\_\_\_\_

§ 211. Form of physician's fee bill. (f)

The following is an itemized account of professional services rendered in connection with the treatment of injury to \_\_\_\_\_

(Name of patient.)

of \_\_\_\_\_ together with charges therefor:

(Full address of patient.)

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_  
(Signature of Affiant.)

OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public.

My commission expires \_\_\_\_\_

§ 212. Form of druggist's cost bill. (g)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to



----- of -----, together with charges  
(Name of patient.) (Full address of patient.)  
therefor:

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

-----  
(Signature of Affiant.)

#### OATH.

State of Ohio, ----- County, ss:

-----, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this-----  
day of -----, 191---

(Seal.)

-----  
Notary Public.

My commission expires-----

### § 213. Form of medical fee bill and hospital charges. (h)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to -----, of -----, together with charges  
(Name of patient.) (Full address of patient.)  
therefor:

Date.	Items.	Amount.
-----	-----	-----
-----	-----	-----

(Items should be written out fully. Do not abbreviate.)

-----  
(Signature of Affiant.)

#### OATH.

State of Ohio, ----- County, ss:

-----, being first duly cautioned and sworn, says that ----- is ----- of -----,  
(Official position.) (Name of hospital.)

-----, and as such duly authorized in the premises; that the  
(Address.)

above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than is charged by affiant for like services in other instances.

Sworn to before me and subscribed in my presence, this-----  
day of -----, 191---

(Seal.)

-----  
Notary Public.

My commission expires-----

## § 214. Form of certificate and oath of lay witness.

(i)<sup>19</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of witness making this report----- Address -----
2. What is your present occupation?----- Name of employer -----  
----- Address -----
3. Are you related in any way to injured person?----- If so, in  
what way?----- 4. What interest, if any, have you in  
this claim? -----
5. Give name of deceased----- Age ----- Color -----  
Nationality -----  
DECEASED HAD NO DEPENDENTS.
6. What weekly wages was deceased receiving at time of injury?  
----- 7. What work was deceased engaged in when injured?  
----- How long had he been doing this work?-----
8. Was this his regular employment?----- If not, what was his  
regular employment?----- 9. Was he skilled in the work  
being done at time of accident?----- 10. How long did dis-  
ability caused by injury last before death ensued?-----
11. State if there was a partial recovery and how long it lasted  
----- 12. Did deceased return to work?----- 13. How  
long did he remain at work?----- At what weekly wage?  
----- 14. When at work he was able to earn----- per  
cent. of the wages received before injured and no more. This  
statement is based upon the actual earning capacity of deceased  
and not merely upon the wages received.
15. Did deceased receive any compensation from the State Insur-  
ance Fund?----- How much?----- 16. Was deceased a

---

<sup>19</sup>All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given.

Fill out blank in ink, using pen or typewriter.

- member of any lodge?----- If so, what lodge or lodges?-----
17. Did deceased carry any accident insurance?----- If so, how much and in what companies?-----
18. Describe injury which caused death of deceased-----
19. Where was deceased taken after accident? (If to a hospital, give name and address)-----
20. Who furnished medicines?  
Name ----- Address -----
21. Names of attending physicians:  
Name ----- Address -----  
Name ----- Address -----
22. Name of undertaker----- Address -----
23. Date of accident ----- Hour of day-----M.
24. Did you witness the accident?----- 25. Give full details as to how accident occurred----- 26. What, in your estimation, was the immediate cause of the injury?-----
27. Was accident caused by fault of any fellow workman of deceased? ----- If so, give name?----- 28. Did accident occur on the premises, or at the plant, or in the course of his employment, or away from the plant?----- 29. If away from plant, state where and by whom he was injured?----- 30. Give names of two other witnesses:  
Name ----- Address -----  
Name ----- Address -----
31. Was accident caused by fault of machines or devices?-----
32. Name of machine, device, etc., causing accident-----  
Condition ----- 33. Were all safeguards in their places at time of accident?----- 34. If any safeguard was removed, by whom was it removed?-----
35. Manager of said plant----- Address -----
36. Foreman or superintendent in charge of department where deceased was injured:  
Name ----- Address -----
- In the presence of: ----- Signed -----

## OATH.

State of Ohio, ----- County, ss:

Before me, -----, a notary public in and for said county, on this ----- day of -----, 191--, personally appeared ----- who, first being duly sworn, declared that the facts set forth in the foregoing certificate, which ----he signed in my presence, are true.

(Seal.)

-----  
Notary Public.

My commission expires-----

GROUP V.

FORMS IN CASES OF DEATH WITH DEPENDENTS.

**§ 215. Form of procedure to obtain compensation and money to pay for medical, hospital and funeral expenses.**

Where a workman (or work-woman), covered by the act has received an injury causing death within two years after the accident and left dependents, the disbursements to the dependents on account of such an accident are limited to any sum not to exceed two hundred dollars (\$200) for medical, nurse and hospital services and medicines and to any sum not to exceed one hundred and fifty dollars (\$150) for funeral expenses as the Liability Board of Awards may deem proper and compensation at 66 2-3 per cent. of his average weekly wage for six years.<sup>19a</sup>

In this group of cases the forms prescribed by the board are as follows: (a) Application for money paid for medical, nurse and hospital services and medicines and for funeral expenses; (b) proof of dependents; (c) undertaker's certificate of death and cost bill; (d) lay witness's certificate in proof of death; (e) physician's certificate in proof of death; (f) employer's certificate and oath; (g) physician's fee bill; (h) druggist's cost bill; (i) medical fee bill and hospital bill; (j) certificate and oath of lay witness. It is the duty of the officer taking the acknowledgment to these forms to see that they are properly filled out and the acknowledgment properly taken.

**§ 216. Form of application for money paid for medical, nurse and hospital services and medicines and for funeral expenses, with awards.<sup>20</sup> (a)**

<sup>19a</sup> See ante § 171 and thereunder § 28, par. 2, 3, and §§ 23, 24, 29, 30 and 31.

<sup>20</sup> All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must

State Liability Board of Awards, Columbus, Ohio.

I, \_\_\_\_\_, of \_\_\_\_\_,  
 (Name of Applicant) (Post Office) (Street and Number)  
 County of \_\_\_\_\_, State of Ohio, do hereby make applica-  
 tion for money to pay for medical, nurse and hospital services and  
 for funeral expenses for \_\_\_\_\_ of \_\_\_\_\_,  
 State of Ohio, who was \_\_\_\_\_ while in the employ of  
 (Killed or Injured)  
 \_\_\_\_\_ whose plant is situated at \_\_\_\_\_, County of \_\_\_\_\_,  
 Ohio, and who died at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of  
 \_\_\_\_\_, 191\_\_\_\_\_.

I also make application for an award as provided in Section 28  
 of the Act creating the State Insurance Fund. This application is  
 made for the benefit of the dependents hereinafter named and is  
 made by me and not by another upon the authority and for the rea-  
 sons here given: \_\_\_\_\_

(Here state fully relationship of applicant to deceased, legal status  
 and other reasons why particular person is applicant herein.)

The following persons were partly or wholly dependent upon  
 deceased at the time of his death:

Name	Relation	Age	Place of Birth
_____	_____	_____	_____
Address _____	_____	_____	_____
Partly or wholly? _____	In what amount per week? \$ _____		
In money or other aid? _____	What? _____		
Name _____	_____	_____	_____
Address _____	_____	_____	_____
Partly or wholly? _____	In what amount per week? \$ _____		
In money or other aid? _____	What? _____		

There has been incurred for said services and medicines for

\_\_\_\_\_

be given. This requirement must be complied with. Otherwise,  
 the blank will be returned for correction. While all the informa-  
 tion asked for may not be necessary to make up full proof in every  
 instance, yet it is necessary for other requirements of this depart-  
 ment.

Fill out blank in ink, using pen or typewriter.

Application for awards in all cases of injury resulting in death  
 must be made by the executor or administrator or beneficiary of the  
 decedent, or by the attending physician or undertaker where there is  
 no beneficiary, NOT LESS THAN TWO WEEKS NOR MORE THAN  
 SIX MONTHS after the death of the injured employee.

treatment for the injury herein described and for funeral expenses the following bills:

Date	To Whom Paid or Due	Item	Amount	Bill Paid (Yes or No)
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

I enclose herewith all of the above bills properly made out, sworn to, and, if paid, properly receipted.

1. Deceased's age----- Sex----- Color----- Place of birth-----  
Married, single or divorced?----- Wife or husband living?---
2. What weekly wage was deceased receiving at time of injury?  
----- 3. How long had deceased been receiving such wages?  
----- 4. Had deceased any other income?----- If so,  
how much and from what source derived?----- 5. What  
work was deceased engaged in when injured?----- 6. How  
long had deceased been doing this work?----- 7. Was this  
his regular employment?----- If not, what was his regular  
employment?----- 8. Had deceased ever received any  
other injury?----- If so, when and where and what was its  
nature?----- 9. Had deceased any recent sickness?-----  
If so, describe it and give name of attending physician-----
10. Had deceased ever had a serious sickness?----- If so, what  
was it and how long did it last?-----  
Give names of attending physicians:  
Name ----- Address -----  
Name ----- Address -----
11. Was deceased in good health at the time of this accident?-----
12. When did deceased enter employ of present employer?-----
13. With whom was he employed previous to this? Name-----  
Address ----- How long -----
14. Was deceased skilled in the labor being performed when injury  
was sustained?----- 15. How long did disability caused by  
injury last before death ensued?----- 16. State if there  
was partial recovery and how long it lasted?-----
17. Did deceased return to work?----- How long did deceased  
remain at work?----- At what weekly wage?-----
18. When at work he was able to earn ----- per cent. of the  
wages received before injury, and no more. This statement is  
based upon the actual earning capacity of deceased and not  
merely upon wages received. 19. Did deceased receive any  
compensation from the State Insurance Fund?----- 20. How  
much? \$ -----
21. Describe the injury which caused death of deceased-----
22. Where was deceased taken after accident-----

## 23. Names of attending physicians:

Name ----- Address -----  
 Name ----- Address -----

24. Who furnished medicines? ----- Address -----

25. Name of undertaker ----- Address -----

26. Date of accident ----- Hour of day ----- M.

27. State clearly the manner in which accident occurred -----

28. Was accident caused by fault of fellow workman? -----

29. Did accident happen on the premises, or at the plant, or in the  
 course of employment of deceased, or away from the plant of  
 the employer? ----- 30. If away from the plant, state  
 when, how and by whom injured? ----- 31. Was de-  
 ceased acting under direction of a superintendent? -----

32. Was accident caused by fault of machines or devices? -----

33. Name of machine, device, etc., causing accident -----  
 Condition? ----- 34. Were all safeguards in their  
 places at the time deceased was hurt? ----- 35. If any safe-  
 guard was removed, did deceased remove it or was it removed  
 by any fellow workman of deceased, or superintendent or fore-  
 man? -----

36. Name of manager of said plant ----- Address -----

37. Name of foreman or superintendent in charge of department in  
 which deceased was injured ----- Address -----

38. Names of three witnesses who witnessed the accident:

Name ----- Address -----  
 Name ----- Address -----  
 Name ----- Address -----

39. Was deceased a member of any lodge? ----- If so, what lodge  
 or lodges? ----- 40. Did deceased carry any accident  
 insurance? ----- If so, how much and in what companies?  
 -----

Witness: ----- Signed -----

Applicant.

## OATH.

State of Ohio, ----- County, ss:

Before me, a notary public in and for said county, on this -----  
 day of -----, 191--, personally appeared -----,  
 the above named applicant, who, being duly sworn, declared that the  
 facts set forth in the foregoing application are true.

(Seal.)

-----  
 Notary Public.

My commission expires -----

(Note—The official taking this acknowledgment is cautioned to  
 see that this blank is properly filled out and that the acknowledg-  
 ment is properly taken.)

OATH.

(Additional oath to be made by dependents capable of understanding the nature of an oath.)

State of Ohio, \_\_\_\_\_ County, ss:

Before me, a notary public in and for said county, on this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, personally appeared \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_ and \_\_\_\_\_ and \_\_\_\_\_

being all of the above named dependents capable of understanding the nature of an oath, who, being first duly sworn, declared that the facts set forth in this application are true.

Sworn to before me and subscribed in my presence on this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_.

(Seal.)

Notary Public.

My commission expires \_\_\_\_\_

§ 217. Form of proof of dependents. (b)

State of Ohio, \_\_\_\_\_ County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, personally appeared before me, a \_\_\_\_\_ within and for the county aforesaid, \_\_\_\_\_, who being duly sworn according to law, declares that \_\_\_\_\_ he resides in \_\_\_\_\_, County of \_\_\_\_\_, State of Ohio, and that \_\_\_\_\_ he was acquainted with \_\_\_\_\_ of \_\_\_\_\_, who died on \_\_\_\_\_, 191\_\_\_\_, as the result of an injury received on \_\_\_\_\_, 191\_\_\_\_, while in the employ of \_\_\_\_\_ of \_\_\_\_\_

Affiant also declares that \_\_\_\_\_ he knows who were dependent upon \_\_\_\_\_ for support and to what degree dependent, and that they are as follows:

1. Name \_\_\_\_\_ How dependent? \_\_\_\_\_  
 Address \_\_\_\_\_ In what degree? \_\_\_\_\_  
 Relation \_\_\_\_\_ In money or other aid? \_\_\_\_\_  
 Age -- Birthplace\_\_\_\_ In what weekly amount? \$ \_\_\_\_\_
2. Name \_\_\_\_\_ How dependent? \_\_\_\_\_  
 Address \_\_\_\_\_ In what degree? \_\_\_\_\_  
 Relation \_\_\_\_\_ In money or other aid? \_\_\_\_\_  
 Age -- Birthplace\_\_\_\_ In what weekly amount? \$ \_\_\_\_\_

Affiant further declares that \_\_\_\_\_ he has no interest whatever in the prosecution of this claim.

(Signature of Affiant.)



## OATH.

Sworn to and subscribed before me this\_\_\_\_\_ day of\_\_\_\_\_,  
191\_\_\_. I have no interest whatever in the prosecution of this claim.  
(Seal.) \_\_\_\_\_

(Notary Public.)

My commission expires\_\_\_\_\_

### § 218. Form of undertaker's certificate of death and cost bill. (c)

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, of \_\_\_\_\_,

(Name of undertaker.)

says, that he is a duly licensed undertaker of\_\_\_\_\_,  
Ohio, at\_\_\_\_\_that as such he was required

(Street and number.)

on the\_\_\_\_\_day of\_\_\_\_\_, 191\_\_, to prepare the dead  
body of\_\_\_\_\_for burial; that he placed said body in a coffin  
and placed said coffin, containing the said body, in a\_\_\_\_\_in  
\_\_\_\_\_cemetery at\_\_\_\_\_, State of\_\_\_\_\_.

Affiant further says that the following is a true and accurate  
account of articles furnished and services rendered in connection  
with the preparation and burial of said body, and the charges there-  
for; that such articles and services were required and furnished on  
account of the purpose above mentioned and the same were neces-  
sary therefor, and that the charges are reasonable and not more  
than he charges for like services in other instances.

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_  
(Signature of Affiant.)

## OATH.

Sworn to before me and subscribed in my presence, this\_\_\_\_\_  
day of\_\_\_\_\_, 191\_\_

\_\_\_\_\_  
Notary Public.

(Seal.)

My commission expires\_\_\_\_\_

### § 219. Form of lay witness's certificate in proof of death. (d)

1. Name of deceased in full\_\_\_\_\_
- Sex\_\_\_\_\_Color\_\_\_\_\_

2. How long have you known the deceased?\_\_\_\_\_
3. (a) Age at death\_\_\_\_\_years. (b) Names and ages of children \_\_\_\_\_  
\_\_\_\_\_
4. Place of death (Give street number, city or town, and state):  
Street\_\_\_\_\_City or town\_\_\_\_\_State\_\_\_\_\_
5. (a) Occupation at the time of death\_\_\_\_\_
- (b) Nationality\_\_\_\_\_
6. Date when you first saw deceased after injury\_\_\_\_\_
7. Date when you last saw deceased after injury\_\_\_\_\_
8. Date of death\_\_\_\_\_
9. (a) What caused death?\_\_\_\_\_
- (b) How long after injury?\_\_\_\_\_
10. Did you see the body of the deceased and did you identify it as that of the injured workman at\_\_\_\_\_
- \_\_\_\_\_while in the employ of\_\_\_\_\_
- of \_\_\_\_\_
11. Was a coroner's inquest held?\_\_\_\_\_Name of coroner \_\_\_\_\_
- \_\_\_\_\_Address\_\_\_\_\_
12. What physicians attended deceased?  
Name\_\_\_\_\_Address\_\_\_\_\_
- Name\_\_\_\_\_Address\_\_\_\_\_
13. Was health of deceased impaired by intemperance or any pernicious habit?\_\_\_\_\_If so, what?\_\_\_\_\_
14. Have you any interest in this claim?\_\_\_\_\_
15. Have you stated all the material facts connected in any way with this death?\_\_\_\_\_
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information?\_\_\_\_\_
- Dated this\_\_\_\_\_day of\_\_\_\_\_, 191\_\_

\_\_\_\_\_  
Attending Physician.

# OATH.

State of Ohio, \_\_\_\_\_ County, ss:

On this\_\_\_\_\_day of\_\_\_\_\_, A. D. 191\_\_, personally appeared before me, the above named\_\_\_\_\_, physician in regular standing, and made oath that the answers by him above made and subscribed are true.

\_\_\_\_\_  
Notary Public.

My commission expires\_\_\_\_\_

## § 220. Form of physician's certificate in proof of death. (e)<sup>21</sup>

Fill in all blanks with ink, using pen or typewriter.

1. Name of the deceased in full \_\_\_\_\_  
Sex \_\_\_\_\_ Color \_\_\_\_\_
2. (a) How long have you known the deceased? \_\_\_\_\_  
(b) How long have you been medical adviser of deceased? \_\_\_\_\_
3. (a) Age at death \_\_\_\_\_ years. (b) Married or single \_\_\_\_\_  
(c) Names and ages of children \_\_\_\_\_  
\_\_\_\_\_
4. Place of death (Give street number, city or town, and state):  
Street \_\_\_\_\_  
City or town \_\_\_\_\_ State \_\_\_\_\_
5. (a) Occupation at the time of death \_\_\_\_\_  
(b) Nationality \_\_\_\_\_
6. Date of your first visit or prescription \_\_\_\_\_
7. Date of your last visit \_\_\_\_\_
8. Date of death \_\_\_\_\_
9. (a) State the remote cause of death \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(b) State explicitly the immediate cause of death \_\_\_\_\_
10. Did you see the body of the deceased and did you identify it as that of the injured workman at \_\_\_\_\_ while in the employ of \_\_\_\_\_, of \_\_\_\_\_?
11. Was a coroner's inquest held? \_\_\_\_\_ Name of coroner \_\_\_\_\_  
Address \_\_\_\_\_
12. Was deceased attended by any other physician during last illness? If so, state his name and address \_\_\_\_\_
13. Was health of deceased impaired by intemperance or any pernicious habit? \_\_\_\_\_ If so, what? \_\_\_\_\_  
\_\_\_\_\_
14. Have you any interest in this claim? \_\_\_\_\_
15. Have you stated all the material facts connected in any way with this death? \_\_\_\_\_
16. So far as you know is there any reason to suspect that this case is not a perfectly fair one, and above all suspicion of concealment of necessary facts and information? \_\_\_\_\_  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

\_\_\_\_\_  
Attending Physician.  
Degree? \_\_\_\_\_ Year \_\_\_\_\_ College \_\_\_\_\_

<sup>21</sup> To be filled out by the attending physician of deceased.

OATH.

State of Ohio, \_\_\_\_\_ County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 191\_\_\_\_, personally appeared before me, the above named \_\_\_\_\_, physician in regular standing, and made oath that the answers by him above made and subscribed are true.

\_\_\_\_\_  
Notary Public.

My commission expires \_\_\_\_\_

§ 221. Form of employer's certificate and oath. (f)<sup>22</sup>

State Liability Board of Awards, Columbus, Ohio.

1. Name of employer \_\_\_\_\_  
Address \_\_\_\_\_
2. Nature of business \_\_\_\_\_
3. Name of deceased \_\_\_\_\_ Address when living \_\_\_\_\_
4. Age \_\_\_\_\_ Sex \_\_\_\_\_ Color \_\_\_\_\_ Place of birth \_\_\_\_\_  
Married, single, or divorced? \_\_\_\_\_ Wife or husband living? \_\_\_\_\_ How many children living? \_\_\_\_\_  
Their ages? \_\_\_\_\_ Which of them are dependent upon injured person for support? \_\_\_\_\_  
To what degree is each dependent? \_\_\_\_\_
5. What weekly wage was deceased receiving at time of injury? \_\_\_\_\_
6. How long had he been receiving such wages? \_\_\_\_\_
7. What work was he engaged in when injured? \_\_\_\_\_
8. How long had he been doing this work? \_\_\_\_\_
9. Was this his regular employment? \_\_\_\_\_  
If not, what was his regular employment? \_\_\_\_\_
10. Was he skilled in the labor being performed when injury happened? \_\_\_\_\_
11. When did he enter your employment? \_\_\_\_\_
12. With whom was he employed previous to this? \_\_\_\_\_ How long? \_\_\_\_\_
13. How long did disability caused by injury last before death ensued? \_\_\_\_\_
14. State if there was partial recovery and how long it lasted? \_\_\_\_\_
15. Did deceased return \_\_\_\_\_

<sup>22</sup>All the questions in this blank form must be answered, or if any question can not be answered, reason for not answering must be given. This requirement must be complied with. Otherwise, the blank will be returned for correction. While all the information asked for may not be necessary to make up full proof in every instance, yet it is necessary for other requirements of this department.

Fill out blank, using ink or typewriter.

to work?----- How long did he remain at work before death?-----At what weekly wage?----- 16. What impairment of earning capacity resulted from injury and lasted from date of return to work until death of deceased? Answer: He was able to earn-----per cent. and no more, of his former wage.

17. Give accurate description of injury which caused death-----

18. Where was deceased taken after accident? (If to a hospital, give name and address)-----

19. Who furnished medicines?----- Address-----

20. Names of attending physicians:

Name----- Address-----

Name----- Address-----

21. Date of accident-----Hour of day-----M.

22. Place of accident: P. O.-----, Street and No.-----  
County of-----, Ohio, -----Building.

23. Give full details as to how accident happened-----

24. Was accident caused by fault of fellow workman -----

25. Did accident happen on the premises, or at the plant, or in the course of employment, or away from plant?-----

26. If away from the plant, state when, how and by whom injured?-----

27. Names and addresses of witnesses:

Name----- Address-----

Name----- Address-----

Name----- Address-----

28. Was accident caused by fault of machines or devices?-----

29. Name of machine, device, etc., causing accident?-----  
----- Condition?-----

30. Were all safeguards in their places at time of accident?-----

31. If any safeguard was removed, by whom was it removed?-----

32. Manager of said plant-----Address-----

33. Foreman or superintendent in charge of department where deceased was injured:

Name----- Address-----

Witness:

(Signed)-----

Employer.

-----

-----

By-----

(Name and official position of person making this report.)

OATH.

State of Ohio, \_\_\_\_\_ County, ss:

Before me, a notary public in and for said county, on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, personally appeared \_\_\_\_\_ who, first being duly sworn, declared that the facts set forth in the foregoing certificate, to which he has signed his name in my presence, are true.

\_\_\_\_\_  
Notary Public.

(Seal.)

My commission expires \_\_\_\_\_

§ 222. Form of physician's fee bill. (g)

The following is an itemized account of professional services rendered in connection with the treatment of injury to \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_

(Name of patient.)

(Full address of patient.)

together with charges therefor:

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_  
(Signature of Affiant.)

OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that he treated the injury to the above named person and that his services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_

\_\_\_\_\_  
Notary Public.

(Seal.)

My commission expires \_\_\_\_\_

§ 223. Form of druggist's cost bill. (h)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to \_\_\_\_\_

\_\_\_\_\_, of \_\_\_\_\_  
 (Name of patient.) (Full address of patient.)  
 together with charges therefor:

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_  
 (Signature of Affiant.)

#### OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than he charges for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

\_\_\_\_\_  
 Notary Public.

(Seal.)

My commission expires \_\_\_\_\_

### § 224. Form of medical fee bill and hospital charges. (i)

The following is an itemized account of medicines furnished and services rendered in connection with the treatment of injury to

\_\_\_\_\_, of \_\_\_\_\_  
 (Name of patient.) (Full address of patient.)  
 together with charges therefor:

Date.	Items.	Amount.
_____	_____	_____
_____	_____	_____

(Please receipt, if paid.)

(Items should be written out fully. Do not abbreviate.)

\_\_\_\_\_  
 (Signature of Affiant.)

#### OATH.

State of Ohio, \_\_\_\_\_ County, ss:

\_\_\_\_\_, being first duly cautioned and sworn, says that \_\_\_\_\_ is \_\_\_\_\_ of \_\_\_\_\_,  
 (Name of hospital) (Official position)

of \_\_\_\_\_, and as such duly authorized in the premises;  
(Address.)

that the above articles or services were required and furnished on account of the purpose above mentioned, and the same were necessary therefor, and that the charges are reasonable and not more than is charged by affiant for like services in other instances.

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

\_\_\_\_\_  
Notary Public.

(Seal.)

My commission expires \_\_\_\_\_

### § 225. Form of certificate and oath of lay witness. (j)<sup>23</sup>

State Liability Board of Awards,

Columbus, Ohio.

1. Name of witness making this report \_\_\_\_\_  
Address \_\_\_\_\_
2. What is your present occupation? \_\_\_\_\_  
Name of employer \_\_\_\_\_ Address \_\_\_\_\_
3. Are you related in any way to deceased \_\_\_\_\_ If so, in what way? \_\_\_\_\_ What interest, if any, have you in this claim? \_\_\_\_\_
4. Name of deceased \_\_\_\_\_ Address when living? \_\_\_\_\_
5. Age \_\_\_\_\_ Color \_\_\_\_\_ Nationality \_\_\_\_\_  
Married, single, or divorced? \_\_\_\_\_  
Wife or husband living? \_\_\_\_\_
6. What weekly wage was he receiving at time of injury? \_\_\_\_\_
7. How long had he been receiving such wages? \_\_\_\_\_
8. Has he any other source of income? \_\_\_\_\_ If so, how much and from what source derived \_\_\_\_\_
9. What work was he engaged in at time of accident \_\_\_\_\_
10. How long had he been doing this work? \_\_\_\_\_
11. Was this his regular employment? \_\_\_\_\_ If not, what was his regular employment? \_\_\_\_\_
12. Was he skilled in the work being done at time of accident? \_\_\_\_\_
13. Has he ever received any other injury to your knowledge? \_\_\_\_\_ If so, when, where and what was its nature? \_\_\_\_\_
14. Has he ever had any serious sickness to your knowledge? \_\_\_\_\_ If so, what was it and how long did it \_\_\_\_\_

---

<sup>23</sup>All questions in this blank should be answered, or if any question can not be answered, reason for not answering should be given.

Fill out blank in ink, using pen or typewriter.



- last ----- 15. Has he had any recent sickness to your knowledge?----- If so, what was it and how long did it last?----- 16. Was he in good health at time of accident?----- 17. How long did disability caused by injury last before death ensued?----- 18. State if there was partial recovery and how long it lasted----- 19. Did deceased return to work?----- How long did deceased remain at work?----- At what weekly wage?-----
20. When at work he was able to earn-----per cent. of the wages received before injury, and no more. This statement is based upon actual earning capacity of deceased, and not merely upon the wages received. 21. Did deceased receive any compensation from the State Insurance Fund ----- How much?----- 22. Was deceased a member of any lodge? ----- If so, what lodge or lodges?----- Did deceased carry any accident insurance?----- If so, how much and in what companies?-----
23. The following persons were partly or wholly dependent upon deceased at the time of his death:
- | Name -----             | Relation -----                   | Age -----  | Place of Birth ----- |
|------------------------|----------------------------------|------------|----------------------|
| -----                  | -----                            | -----      | -----                |
| Address -----          | -----                            | -----      | -----                |
| Partly or wholly ----- | In what amount per week? \$----- |            |                      |
|                        | In money or other aid?-----      | What?----- |                      |
| Name -----             | -----                            | -----      | -----                |
| Address -----          | -----                            | -----      | -----                |
| Partly or wholly ----- | In what amount per week? \$----- |            |                      |
|                        | In money or other aid?-----      | What?----- |                      |
24. Describe injury which caused death of deceased-----
25. Where was deceased taken after accident?-----
- (If to a hospital give name and address.)
26. Names of attending physicians:
- |           |              |
|-----------|--------------|
| Name----- | Address----- |
| Name----- | Address----- |
27. Who furnished medicines ----- Address-----
28. Undertaker----- Address-----
29. Date of accident----- Hour of day-----M.
30. Did you witness the accident?-----
31. Give full details as to how accident occurred-----

32. What, in your estimation, was the immediate cause of the injury? -----  
-----
33. Was accident caused by fault of any fellow workman of deceased?----- If so, give name and address-----  
-----
34. Did accident happen on the premises, or at the plant, or in the course of his employment, or away from the plant?-----  
-----
35. If away from plant, state where and by whom he was injured?  
-----
36. Give names of two other witnesses:  
Name----- Address-----  
Name----- Address-----
37. Was accident caused by fault of machines or devices?-----
38. Name of machine, device, etc., causing accident-----  
Condition -----
39. Were all safeguards in their places at time of accident?-----
40. If any safeguard was removed, by whom was it removed?-----
41. Manager of said plant:  
Name----- Address-----
42. Foreman or superintendent in charge of department where deceased was injured:  
Name----- Address-----
- In the presence of:

Signed-----  
-----  
-----

# OATH.

State of Ohio, ----- County, ss:

Before me, -----, a notary public in and for said county, on this-----day of-----, 191---, personally appeared -----, who, first being duly sworn, declared that the facts set forth in the foregoing certificate, which-----he signed in my presence, are true.

-----  
Notary Public.

(Seal.)

My commission expires-----

## CHAPTER XII.

### THE WISCONSIN WORKMEN'S COMPENSATION ACT.

- | Sec.  | Sec.   |
|---|--|
| 226. Nature and scope of Wisconsin act.   | 237. Formal procedure under Wisconsin act.   |
| 227. Text of Wisconsin workmen's compensation act with construction of its provisions.                | 238. Form of employer's written acceptance. (a)  |
| 228. The opinion of the Supreme Court of Wisconsin sustaining constitutionality of act.               | 239. Form of employer's notice of withdrawal from operation of act. (b)                                    |
| 229. Decisions of commission—Construction of word "employment."                                       | 240. Form of notice that employer has filed notice of election to become subject to provisions of act. (c) |
| 230. Decisions of commission—Powers of commission—Review of awards—Construction of word "employment." | 241. Form of notice by employer to the commission of compliance with the law. (d)                          |
| 231. Decisions of commission—Construction of "wilful misconduct."                                     | 242. Form of first report of accident. (e)   |
| 232. Decisions of commission—Construction of word "support."  | 243. Form of supplementary reports on accident. (f)  |
| 233. Decisions of commission—Construction of "casual employment" and time of serving "notice."        | 244. Form of answer to application. (g)  |
| 234. Decisions of commission—Meaning of "support" "dependents."                                       | 245. Form of notice by employé that he elects to be subject to provisions of act. (h)                      |
| 235. Procedure under the act—Rules of practice.   | 246. Form of notice of employé upon entering employment that he elects not to be subject to act. (i)       |
| 236. Circular letter to employers by the commission in explanation of its rules of practice.          | 247. Form of notice to employer of claim for injury under act. (j)   |
|   | 248. Form of application for adjustment of claim. (k)  |
|   | 249. Form of accident report of casualty company. (l)  |

Sec.	Sec.
250. Form of notice of hearing. (m)	253. Form of notice of the entry of findings and award made by commission. (p)
251. Form of subpoena. (n)	
252. Form of admission of serv- ice. (o)	

§ 226. Nature and scope of Wisconsin act.—This act allows an election by the employer. Employés become subject to the provisions of the act thirty days after the employer's election to accept its provisions. By affirmative statement filed with his employer, the employé may become subject to the act immediately after his employer's election. The employé is also permitted, within thirty days after his employer's action, to file a refusal. The employer's liability to pay the compensation in lieu of other liability, occurs in cases where both employer and employé are subject to the provisions of the act and the injury is received while the employé is performing services growing out of and incidental to his employment, and the injury is proximately caused by the accident and not by wilful misconduct. Fees and costs of court proceedings on the award may be granted at the discretion of a reviewing court. The award is entitled to preference over the unsecured debts of the employer. The employer who does not elect to be bound to pay the compensation provided by the act is denied the right to the common-law defenses of assumption of risk and fellow servant<sup>1</sup> in suits brought by employés for injuries. In cases where the employer has filed his acceptance of the act, the refusal of an employé to come under its provisions restores to the employer the defenses of assumption of risk and fellow servant's negligence as to that particular employé.<sup>1a</sup>

The employer may not obtain exemption from these provisions by contracts, rules or regulations.

<sup>1</sup> When four or more workmen are employed, post p. 529.

<sup>1a</sup> The Industrial Commission of Wisconsin reports it as a fact that up to September 1, 1912, no employé has availed himself of this option.

A certified copy of the award may be filed by either party in the circuit court, whereupon the court shall enter judgment for the amount without notice, and this judgment shall have the effect of ordinary judgments entered on the trial of causes. The award or judgment on the award may be revived on the ground that the commission acted without or in excess of its powers, or that the award was procured through fraud, or that the finding of facts by the commission does not support the award. An appeal lies from the judgment of review in the same manner as appeals from the orders of the circuit court.

**§ 227. Text of Wisconsin workmen's compensation act with construction of its provisions.**—This act became effective September 1, 1911, and provides:

Section 1. Abrogation of Defenses.—There are added to the statutes thirty-two new sections to read: Section 2394—1. In any action to recover damages for a personal injury sustained within this state by an employé while engaged in the line of his duty as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of any officer, agent, or servant of the employer, it shall not be a defense:

1. That the employé either expressly or impliedly assumed the risk of the hazard complained of.

2. When such employer has at the time of the accident in a common employment four or more employés, that the injury or death was caused in whole or in part by the want of ordinary care of a fellow servant.

Any employer who has elected to pay compensation as hereinafter provided shall not be subject to the provisions of this section 2394—1.

Section 2394—2. No contract, rule, or regulation, shall exempt the employer from any of the provisions of the preceding section of this act.

**Note by the Committee**—The object of these two sections is to destroy two of the common-law defenses now in existence in actions brought by an employé against his employer to recover damages for or on account of an injury. These two defenses are commonly known as assumption of the risk and negligence of a fellow servant. The tendency throughout the United States in the last ten years has been to destroy these defenses for the reason that they are considered unjust to employés. The following states have abrogated or modified the defense of fellow servant's negligence: Arkansas, Colorado, Florida, Georgia, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia and Wisconsin. The defense of assumption of the risk has been destroyed or modified in many of the above states. The bill now recommended absolutely destroys these two defenses in all actions between employer and employé on account of negligence. The destroying of these two defenses will affect principally the large employer in industries carried on with a large amount of machinery and many employés. There will be little or no effect upon the employer who has but one employé and a small amount of machinery. If the employer or employé is acting under the provisions of that part of the bill beginning with section 2394—4 known as the optional portion of the compensation bill, these defenses will have no force or effect, because no defenses apply to that portion of the bill. Consequently this part of the bill (sections 2394—1 and 2394—2) applies to all persons who have not elected to accept the provisions beginning with section 2394—4.

Under this provision of the bill (sections 2394—1 and 2394—2) in case of injury to an employé, in order to recover, it would be necessary for him to prove that his employer was negligent, that is, that there was want of ordinary care on the part of his employer which directly or proximately caused the injury complained of. If the employé succeeded in so proving, then the employer, in order to defeat recovery, would be allowed to show that the employé was so negligent, that is, that there was want of ordinary care upon the part of the employé which directly contributed to the injury. And if this were established it would defeat the action. Also, if it were shown that there was no want of ordinary care on the part of the employer which directly caused the injury, the employé would be defeated. It would therefore be absolutely necessary to establish two facts in order for an employé to recover: (1) That there was want of ordinary care on the part of the employer which directly caused the injury; (2) That there was no want of ordinary care on the part of the employé which directly contributed to his injury.

Under this proposed law, if the employé hereafter proves that his injury was directly caused by the negligence of a fellow servant, the employer will be liable. Also if the employé establishes

that his injury was directly caused by the want of ordinary care on the part of his employer, it will not be a defense to show that the employé assumed the risk of such want of ordinary care upon the part of the employer. The committee feels that it would be harsh to the average manufacturers having many employés, to wipe out these two defenses without offering some method whereby the liability incurred by the employer might be definitely fixed.

**Note by the commission**—The bill as first drafted did not contain the provision limiting the taking away of the defense only to employers having four or more employés in a common employment. The reason for the limitation may probably be found in the origin of the fellow servant doctrine, i. e., that the employé, being closely associated with his fellow servants, had a better opportunity to observe the habits of his fellow laborers and to guard against their negligence than had the employer. As labor conditions became more complex and great numbers of men were engaged in a common employment, the reason for the rule ceased to exist.

Under the act as passed the defense of assumption of risk is taken away from all employers, but the defense of the negligence of a fellow servant is taken away from those employers only who have four or more employés in a common employment.

Section 2394—3. Application to Railroads.—Except as regards employés working in shops or offices of a railroad company, who are within the provisions of subsection 9 of section 1816 of the statutes as amended by chapter 254 of the laws of 1907, the term “employer” as used in the two preceding sections of this act shall not include any railroad company as defined in subsection 7 of said section 1816 as amended, said section 1816 and amendatory acts being continued in force unaffected, except as aforesaid, by the preceding sections of this act.

**Note by the committee**—This section exempts from the two preceding sections railroad employés, who are included under what is known as the comparative negligence act, being chapter 254 of the laws of 1907, as they are in a separate class by themselves, and have a separate provision of the statute applicable to them.

This ends that part of the bill which is of general effect and includes everybody. The remaining sections, commencing with section 4, are applicable only to those who elect to come within their provisions. To those who do elect to come within their provisions, the remedies therein specified are exclusive and no other or further remedies are allowed.

Section 2394—4. Liability for Compensation.—Lia-

bility for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall exist against an employer for any personal injury accidentally sustained by his employé, and for his death, if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

1. Where, at the time of the accident, both the employer and employé are subject to the provisions of this act according to the succeeding sections hereof.

2. Where, at the time of the accident, the employé is performing service growing out of and incidental to his employment.

3. Where the injury is proximately caused by accident, and is not caused by wilful misconduct.

And where such conditions of compensation exist for any personal injury or death, the right to recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions of the preceding sections of this act.

**Note by the Committee**—Whenever this section applies—as it does apply to all who have elected to accept its provisions—compensation is paid whenever three facts appear, namely: (1) The employé was injured; (2) Such injury grew out of and was incidental to his employment; (3) Such injury was not caused by wilful misconduct. It makes no difference whose fault it was or who was to blame; it is sufficient that the industry caused the injury. “Wilful misconduct” as referred to in this section is conduct where in the will of the person was exercised; in other words, intentional; and it may be such wilful misconduct on the part of a third person.

Section 2394—5. “Employer” Defined.—The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:



1. The state, and each county, city, town, village, and school district therein.

2. Every person, firm, and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employé for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in the next section.

**Note by the committee**—This section defines the two classes of employers to which Section 2394—4 and the subsequent sections apply: (1) The state and each county, city, town, village and school district. As to these the bill is compulsory and the state and each subdivision must, in case of injury to its employés, pay the compensation as fixed; (2) All persons who shall have elected as provided in section 2394—6 or the following sections, to come under the provisions of this bill.

As to the right of the legislature to make an act compulsory as to the state and its subdivisions, there is little doubt; that it should be done is recognized by all. The moral aspect of this phase of the subject is well brought out in the presidential message of Theodore Roosevelt in 1908 when he wrote:

“The recent decision of the Supreme Court in regard to the employers’ liability act, the experience of the Interstate Commerce Commission and of the Department of Justice in enforcing the interstate commerce and anti-trust laws, and the gravely significant attitude toward the law and its administration recently adopted by certain heads of great corporations, render it desirable that there should be additional legislation as regards certain of the relations between labor and capital, and between the great corporations and the public.

“The Supreme Court has decided the employers’ liability law to be unconstitutional because its terms apply to employés engaged wholly in intrastate commerce as well as to employés engaged in interstate commerce. By a substantial majority the court holds that the Congress has power to deal with the question in so far as interstate commerce is concerned.

“As regards the employers’ liability law, I advocate its immediate re-enactment, limiting its scope so that it shall apply only

to the class of cases as to which the court say it can constitutionally apply, but strengthening its provisions within this scope. Interstate employment being thus covered by any adequate national law, the field of intrastate employment will be left to the action of the several states. With this clear definition of responsibility the states will undoubtedly give to the performance of their duty within their field the consideration the importance of the subject demands.

"I also very urgently advise that a comprehensive act be passed providing for compensation by the government to all employés injured in the government service. Under the present law an injured workman in the employment of the government has no remedy, and the entire burden of the accident falls on the helpless man, his wife and his young children. This is an outrage. It is a matter of humiliation to the nation that there should not be on our statute books provision to meet and partially to atone for cruel misfortune when it comes upon a man through no fault of his own while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur; for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accidents (excluding, of course, accidents due to wilful misconduct by the employé) on the industry as represented by the employer, which in this case is the government.

"In all these countries the principle applies to the government just as much as to the private employer. Under no circumstances should the injured employé or his surviving dependents be required to bring suit against the government, nor should there be the requirement that in order to insure recovery negligence in some form on the part of the government should be shown. Our proposition is not to confer a right of action upon the government employé, but to secure him suitable provision against injuries received in the course of his employment. The burden of the trade risk shov'l be placed upon the government. Exactly as the working man is entitled to his wages, so he should be entitled to indemnity for the injuries sustained in the natural course of his labor. The rates of compensation and the regulations for its payment should be specified in the law, and the machinery for determining the amount to be paid should in each case be provided in such manner that the employé is properly represented without expense to him. In other words, the compensation should be paid automatically, while the application of the law in the first instance should be vested in the Department of Commerce and Labor. The law should apply to all laborers, mechanics, and other civilian employés of the government of the United States, including those in the service of the Panama Canal Commission and of the insular governments.

"The same broad principle which should apply to the government should ultimately be made applicable to all private employers.

Where the nation has the power it should enact laws to this effect. Where the states alone have the power they should enact the laws. It is to be observed that an employers' liability law does not really mean mulcting employers in damages. It merely throws upon the employer the burden of accident insurance against injuries which are sure to occur. It requires him either to bear or to distribute through insurance the loss which can readily be borne when distributed, but which, if undistributed bears with frightful hardship upon the unfortunate victim of accident.

"In theory, if wages were always freely and fairly adjusted, they would always include an allowance as against the risk of injury, just as certainly as the rate of interest for money includes an allowance for insurance against the risk of loss. In theory, if employés were all experienced business men, they would employ that part of their wages which is received because of the risk of injury to secure accident insurance. But as a matter of fact, it is not practical to expect that this will be done by the great body of employés. An employers' liability law makes it certain that it will be done, in effect, by the employer, and it will ultimately impose no real additional burden upon him."

**Note by the commission**—Officers of the state, counties, cities, towns, villages and school districts should take notice that this act applies to the state and all counties, cities, towns, villages and school districts, from and after its publication, to-wit, May 3, 1911. All accidents of employés of these governmental agencies received in the course of their employment should be reported to the commission by the proper officers, and arrangement should be made for compensation as provided in the act.

**Section 2394—6. Election by employer.**—Such election on the part of the employer shall be made by filing with the industrial accident board,<sup>2</sup> hereinafter provided for, a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section 2394—5 of this act to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he desires to with-

<sup>2</sup> Superseded by Industrial Commission of Wisconsin.

draw his election to be subject to the provisions of the act.

**Note by the committee**—The filing of the statement referred to in this section is the employers' voluntary election to pay the compensation scheduled. Under the same section, however, he is at liberty to withdraw his election at the end of the year or to continue it from year to year at pleasure. Owing to constitutional limitations it was necessary to frame an optional bill and such a bill can be successful only with the hearty co-operation of employers and employes. Therefore the committee deemed it wise to permit employers to withdraw their election when the act failed to work to their complete satisfaction. Compensation measures are purely experimental in this country and in order to persuade employers to try the experiment the committee feels that they should be given the right to return to old conditions after having tried the new and found them unsatisfactory. It will take but a short time, this committee believes, for employers to determine the extent of the burden of operating under the act and to find whether the new method is more advantageous than the old.

**Section 2304—7. "Employé" defined**—The term "employé" as used in section 2394—4 of this act shall be construed to mean:

1. Every person in the service of the state, or of any county, city, town, village, or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, town, village, or school district therein, provided that one, employed by a contractor, who has contracted with a county, city, town, village, school district, or the state, through its representatives, shall not be considered an employé of the state, county, city, town, village, or school district which made the contract.

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employes), but not including any per-

son whose employment is but casual or is not in the usual course of the trade, business, profession, or occupation of his employer.

Section 2394—8. Election by Employé.—Any employé as defined in subsection 1 of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employé as defined in subsection 2 of the preceding section shall be deemed to have accepted and shall, within the meaning of section 2394—4 of this act, be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

1. The employer charged with such liability is subject to the provisions of this act, whether the employé has actual notice thereof or not; and

2. Such employé shall not, at the time of entering into his contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this act; or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of this act, such employé shall have given to his employer notice in writing that he elects to be subject to such provisions, or without giving either of such notices, shall have remained in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

**Note by the committee**—These two sections define the two classes of employés to whom section 2394—4 and the subsequent sections apply. As to persons in the service of the state, counties, towns, villages or school districts, except the officials, the act is compulsory. There can be no serious doubt that the legislature has a right to deprive any employé of this state of any right of action for and on account of damages for an injury, because no such cause of action exists generally, except based upon the statute. Then, all employés are within the provisions of sections 2394—4 and subsequent sections of this act, unless at the time of entering into such employment the employé gives the employer written notice that

he elects not to be subject to the provisions of the act. In those cases in which the contract of hiring was made before the time that the employer elected to come under the act, the employé is to have the right to elect to be subject to such provisions. If he gives no notice of such election but remains in the service of the employer for thirty days after the latter files notice of his election, then the employé shall be subject to the act. The New York law provides that this contract between the employer and the employé shall be in writing, acknowledged, and filed with the county clerk in every case. The committee feels that it would be a great hindrance to the ordinary conduct of business, if, whenever an employé desired to hire out to an employer, it became necessary to draw up a formal contract before he could receive compensation under the act. As provided here, when a man hires out to an employer who has elected to come under the provisions of the act, by the mere fact of hiring out he waives his right to any common-law damages in case of injury, and accepts the compensation. This will not change the present way of doing business, and if the provisions for compensation are fair, as the committee thinks they are, an appeal to workmen as being fair and furnishing much better average compensation in fact than under the present system, the reasonable employé will be glad to accept the provisions of the bill and thus be assured of the compensation provided. This law must work automatically as nearly as possible.

These sections also provide that the employé must elect at the time of hiring instead of after the injury. The election here mentioned means the choice, or right, to sue at common law for an injury, or to accept in advance the scale of compensation set forth in the act. The employé, when his employer elects to come under the act, must take one or the other. He can not take both. If he chooses to accept the compensation at the time he hires out, then he waives his right to sue if he is injured and can have the compensation only. If he chooses to retain his right to sue at common law, then he can not claim the compensation. It is important to state here that the waiver by an employé of his common-law right binds his widow or dependents in case of fatal accident. The English law, contrary to the Wisconsin act, allows the election after the injury. The German law is compulsory both as to employers and employés so that there is no election.

Probably no other single phase of this subject of compensation has given rise to more earnest thought and careful deliberation on the part of the committee than this question of election before or after the accident. The conclusion unanimously reached that such election should be made at the time of hiring can be sustained upon the ground that it prevents great waste. If the election is made after the injury, the employé has two

options: (a) He can accept the compensation under this act; (b) he can sue the employer in court and recover unlimited damages if he is able to show that his injury was caused by the fault of his employer and through no fault of his own. This means that in those cases where the injury was caused solely by the fault of the employé and also in those cases where the injury was purely an accident (a hazard of the industry, and no fault of any one) and also in those cases where injury was caused partly by the fault of the employé and partly by the fault of the employer, the employer would be compelled to pay compensation. Why? The employé in all such cases would elect to accept compensation, knowing that he could not recover in court. In the one case where the injury was caused solely by the fault of the employer and without fault of the employé, he would not accept the scheduled compensation but would sue at common law in almost complete confidence of victory. He would have every reason to expect a jury to grant much larger damages than would be possible had he accepted compensation.

Under this condition of affairs in which the injured employé might elect after injury to sue or accept compensation, what would be the result? Whenever an injury occurred, the employer in order to protect himself from a large verdict from a jury, would be forced to employ lawyers to investigate the cause of the accident, secure affidavits from all persons knowing anything about the circumstances and then have these lawyers prepare to resist the claim of the employé. Thus there would be incurred a heavy expense, which instead of adding to the amount paid the employé, would cut it down or else cut off completely his chance for financial assistance. The legal fight of the employer would add very greatly to his burden and to the burden borne by the industry. With election after the accident, therefore a great share of the waste of the present system would be continued instead of diminished.

Election before the accident may be sustained upon a still firmer ground. Election after the accident would benefit a few employés at the expense, in a great measure, of the many. It would be only those employés whose injury was caused by the sole fault of the employer without any fault on the part of the employé, who could be benefited by the deferred election: it is estimated that these cases would be only about 10 per cent. of the whole. The fighting of these claims of the 10 per cent. and the occasional payment of large verdicts, would mean that the 90 per cent. would have to accept less compensation than that now scheduled. In other words, the many would lose in order that the few might gain. It must be remembered that there is necessarily a limit to the burden that the employer or the industry can bear. If a large part of that burden is wasted, the remainder to be used for compensation must be less. By providing for pre-election (election at the time of the hiring),

instead of deferred election (election at the time of the injury), the committee felt justified in increasing the compensation, in case of death or total incapacity, from three to four years' earnings and in raising the minimum from \$1,000 to \$1,500. If the election should be changed from the time of hiring to the time of injury, then, in the opinion of the committee, the compensation schedule, in justice to employers, should be lowered. We quote Prof. C. R. Henderson, one of the best known authorities on workmen's compensation: "What we must now seek is protection for all injured workmen—not revenge for the few."

Another most vital truth regarding election after the injury is that it introduces an element of uncertainty as to the amount to be received by the injured employé. This condition causes unrest and dissatisfaction. To illustrate: "A," "B" and "C" are seriously injured under what to the average person appears to be similar circumstances, and to the same extent. "A" elects to sue and to decline to accept compensation. The case is tried and is carried to the Supreme court where it is finally decided that "A" can not recover; that while his injury was caused by the fault of his employer, still "A" himself was partly at fault. So "A" and his family secure no relief after years of waiting and suffering. "B," apparently injured in the same manner and to the same extent as "A," also elects to sue at common law and to refuse compensation. He recovers \$12,000 and this judgment is sustained in the Supreme court on the ground that his injury was caused by the fault of the employer without any fault on the employé's part. "B" therefore gets \$12,000, less of course, the fee of his attorney and expenses of the suit. "C" whose case is similar to that of "A" and "B," elects immediately after the accident to accept his compensation and gets the maximum, \$3,000, without delay: Result: "A" and his friends are dissatisfied and feel bitter toward employers in general and the courts in particular. To some extent "C" feels the same way because of the large sum recovered by "B."

This committee feels that compensation should be certain as to all and certain as to the amount so that all employés and others will understand why the dependents of one man get \$1,500 in case of death while the dependents of another get \$2,000 or \$3,000, just as clearly as they now understand why one workman gets \$2 a day and another more skillful workman gets \$4 a day. The committee appreciates the force of the argument "that a totally incapacitated man might suffer an injustice; that the maximum allowed under the act would not be just compensation." On the other hand, it knows that under the present system the totally incapacitated employé, in the majority of cases, gets absolutely nothing. Under this act, while he may not get full compensation, he will always get some compensation, and that, practically, without expense to him, and at the time when he most needs it.



Section 2394—9. Scale of Compensation.—Where liability for compensation under this act exists, the same shall be as provided in the following schedule:

1. Such medical and surgical treatment, medicines, medical and surgical supplies, crutches, and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer; and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employé in providing the same.

2. If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employé leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

(a) If the accident causes total disability, sixty-five per cent. of the average weekly earnings during the period of such total disability; provided that, if the disability is such as not only to render the injured employé entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance after the first ninety days shall be increased to one hundred per cent. of the average weekly earnings.

(b) If the accident causes partial disability, sixty-five per cent. of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods, of each such total or partial disability shall be in accordance with said subdivisions (a) and (b) respectively.

(d) Said subdivisions (a), (b), and (c) shall be subject to the following limitations:

Aggregate disability indemnity for injury to a single

employé caused by a single accident shall not exceed four times the average annual earnings of such employé.

The aggregate disability period shall not, in any event, extend beyond fifteen years from the date of the accident.

The weekly indemnity due on the eighth day after the employé leaves work as the result of the injury may be withheld until the twenty-ninth day after he so leaves work; if recovery from the disability shall then have occurred, such first weekly indemnity shall not be recoverable; if the disability still continues, it shall be added to the weekly indemnity due on said twenty-ninth day and be paid therewith.

If the period of disability does not last more than one week from the day the employé leaves work as the result of the injury no indemnity whatever shall be recoverable.

3. The death of the injured employé shall not affect the obligation of the employer under subsections 1 and 2 of this section, so far as his liability shall have become payable at the time of death; but the death shall be deemed the termination of disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity:

(a) In case the deceased employé leaves a person or persons wholly dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of subsection 2 of this section, to make the total compensation for the injury and death (exclusive of the benefit provided for in subsection 1), equal to four times his average annual earnings; the same to be payable, unless and until the board shall direct payment in gross, in weekly installments corresponding in amount to the weekly earnings of the employé.

(b) In case the deceased employé leaves no one

wholly dependent on him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of four times such average annual earnings of the employé as the average annual amount devoted by the deceased to the support of the person or persons so partially dependent on him for support bears to such average annual earnings, the same to be payable, unless and until the board shall direct payment in gross, in weekly installments, corresponding in amount to the weekly earnings of the employé; provided that the total compensation for the injury and death (exclusive of the benefit provided for in said subsection 1) shall not exceed four times such average annual earnings.

(c) Liability for the death benefits provided for in subdivisions (a) and (b) respectively shall only exist where the accident is the proximate cause of death; provided that, if the accident proximately causes permanent total disability, and death ensues from some other cause before disability indemnity ceases, the death benefit shall be the same as though the accident had caused death; and provided further that, if the accident proximately causes permanent partial disability and death ensues from some other cause before disability indemnity ceases, liability shall exist for such percentage of the death benefits provided for in said subdivision (a) or (b) (as the case may be), as shall fairly represent the proportionate extent of the impairment of earning capacity caused by such permanent partial disability in the employment in which the employé was working at the time of the accident.

(d) If the deceased employé leaves no persons dependent upon him for support, and the accident proximately causes death, the death benefit shall consist of the reasonable expense of his burial, not exceeding \$100.

**Note by the Committee:**—This section provides for the amount of compensation that shall be paid to an injured employé or his

dependents. This scale is more liberal than any other scale that has heretofore been enacted or proposed in any state. The New York law provides for payment of 50 per cent. of the average weekly earnings, and in case of death the payment of 1,200 times the average weekly earnings, with a maximum of \$3,000, but no minimum. Under the Wisconsin act the employer must provide medical and surgical treatment, medicine, etc., for ninety days. This provision is made for two reasons: First: As a rule an employer is more competent to judge the efficiency of the doctor employed and to provide efficient medical and surgical treatment. Second: It is to the interest of the employer to furnish the very best medical and surgical treatment, so as to minimize the result of the injury, and to secure as early a recovery as possible. The more serious the result of the injury, the more the employer must pay. Also by this means he obtains a complete knowledge of the exact condition of the injured employé.

This section also provides where there is total disability, for the payment of 65 per cent. of the average weekly earnings during the period of such total disability. But no wages less than \$375 per year shall be considered, nor more than \$750. In case the injury renders the employé entirely helpless, the indemnity is increased to 100 per cent. of the average weekly earnings. Where the injury causes only partial disability, 65 per cent. of the weekly loss in wages is paid. The only limitations are that the aggregate disability for injury to a single employé caused by a single accident shall not exceed four times the average annual earnings. This refers to those rare cases where in one accident the employé receives two distinct injuries. Also there is a limitation that the weekly indemnity due on the eighth day after the injured employé leaves work shall be held until the twenty-ninth day, and if recovery shall have occurred within that time, the first week's indemnity shall not be paid. The object of this is to prevent malingering. A man receiving a slight injury that might disable him for three or four days, might pretend to be disabled for a week in order to receive the first week's indemnity. But it is assumed that he would not lay up for four weeks in order to get this first week's indemnity. This reserves to those who are seriously injured, the right to receive their compensation from date of the injury. As medical and surgical treatment are furnished in all cases it seems only fair that in minor cases not causing disability for a week, compensation should not be recovered.

Subsection 3 provides for death benefits, and this is based upon four times the average annual earnings, but not less than \$1,500, nor more than \$3,000. This sum is to be paid in the same manner as wages. The object of this is to furnish the compensation in the same method that the family has been in the habit of receiving support. A deviation from this rule can be made, however, when

the Industrial Accident board is convinced that it is to the best interest of the parties to order that the amount be paid in a lump sum.

In case there are no dependents, the death benefit is simply the reasonable expense of burial not exceeding \$100.

In subdivision "c" of subsection 3, provision is made for those cases where death may ensue after injury and still not be caused by the injury. Any comprehensive compensation scheme should provide for the dependents in case of the death of a person who has been totally disabled and who is receiving compensation at the time of death but whose death results from a cause not connected with the original injury. The compensation is fixed, in fact, at the time of the injury, and the further fact that it is paid in installments instead of a lump sum should not defeat the dependents of their right to support if death of the injured person from any cause follows. This same provision in modified form is carried into those cases where there is only permanent partial disability. The justice of these provisions must appeal to those giving the matter broad consideration.

Section 2394—10. Method of Computation—1. The weekly earnings referred to in section 2394—9 shall be one fifty-second of the average annual earnings of the employé; average annual earnings shall not be taken at less than \$375, nor more than \$750, and between said limits shall be arrived at as follows:

(a) If the injured employé has worked in the employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed.

(b) If the injured employé has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or in similar employment in the same or a neighboring place shall have

earned in such employment during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employé can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employé, and of other employés of the same or most similar class working in the same or most similar employment, in the same or a neighboring locality, shall reasonably represent the annual earning capacity of the injured employé at the time of the accident in the employment in which he was working at such time.

(d) The fact that an employé has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of, the previous provisions of this section.

2. The weekly loss in wages referred to in section 2394—9 shall consist of such percentage of the average weekly earnings of the injured employé, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

3. The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employé:

(a) A wife upon a husband with whom she is living at the time of his death.

(b) A husband upon a wife with whom he is living at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of the parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employé; and in such other cases, if there is more than one person wholly dependent, the death benefits shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof; and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

4. No person shall be considered a dependent unless a member of the family of the deceased employé, or bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother, or sister.

5. Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the accident to the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees; provided that in case of the death of a dependent whose right to a death benefit has thus become fixed, so much of the same as is then unpaid shall be recoverable by and payable to his personal representative in gross. No person shall be excluded as a dependent who is a non-resident alien.

6. No dependent of an injured employé shall be deemed, during the life of such employé, a party in interest to any proceeding by him for the enforcement or collection of any claim for compensation, nor as respects the compromise thereof by such employé.

**Note by the Committee:**—This section provides the manner in which the weekly earnings of the injured employé may be arrived at, and the rules as laid down are as fair and as definite as the committee could reach. Subsection 3 specifies who conclusively shall be presumed to be solely and wholly dependent for support upon the deceased employé. The persons therein mentioned are those so considered under the present system. But very little departure from present rules is found in this provision.

In subsection 6 reference is made to a compromise of the claim of the employé or his dependents for compensation. This provision was inserted after a considerable debate. It was felt that there should be no compromise; that it was unfair to the employé, or in fact to either party. Both employers and employés object very much to a compromise of this compensation and the intention of the whole bill is that the injured employé or his dependents shall receive the full compensation. At the same time it is realized that there may be honest differences of opinion as to the amount of such compensation, and when a compromise of the differences is made fairly and honestly, it should stand. On the other hand, the widow and her children are clearly entitled to \$1,500, and if it should be compromised for \$1,000, such a compromise should not be allowed to stand. As a safeguard against such compromises, they are made subject to review within one year by the Industrial Accident board.

Section 2394—11. Notice of Injury.—No claim to recover compensation under this act shall be maintained unless, within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and address of the person injured, the time and place where the accident occurred, and the nature of the injury, and signed by the person injured or by some one on his behalf, or in case of his death, by a dependent or some one on his behalf, shall be served upon the employer, either by delivering to and leaving with him a copy of such notice, or by mailing to him by registered mail a copy thereof in a sealed and postpaid envelope



addressed to him at last known place of business or residence. Such mailing shall constitute completed service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days, shall be equivalent to the notice herein required; and provided further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for collection of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby; and provided further, that if no such notice is given and no payment of compensation made, within two years from the date of the accident, the right to compensation therefor shall be wholly barred.

**Note by the committee:**—This section provides for the notice of accidents that must be given to employers. This phase has caused considerable trouble under different compensation acts in Europe, and it is a hard subject satisfactorily to settle. The above provisions are recommended as reasonable. In justice to employers there should be a time when, if no notice has been given, a claim for compensation should be barred, and the committee has fixed that time at one year from the date of the accident.

**Section 2394—12. Examination by Physician.**—Wherever in case of injury the right to compensation under this act would exist in favor of any employé, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial accident board, or a member or examiner thereof. The employé shall be entitled to have a physician, provided and paid for by himself, present at any such examination. So long as the employé, after such written request of the employer, shall refuse to submit to such examination, or shall in any way ob-

struct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall refuse to submit to such examination after direction by the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

**Note by the committee:**—In this section there is a provision for examination of the injured person by a physician employed by the employer. The employé, however, is protected by the right to have his own physician present. In case any member of the Industrial Commission of Wisconsin, or its examiner orders an injured employé to be examined, and he refuses, his right to compensation during the period of such refusal shall be barred. These provisions, we think, are just and right; if the right to compensation were merely suspended during the time that the employé refused to be examined, the employer would be without protection against unjust claims. If the injured employé recovered there would be no way of telling the extent of his injury or disability at the time he refused to be examined. This section also provides that physicians so employed may be required to testify as to the results of examinations.

Section 2394—13. Creation of Board.—There is hereby created a board which shall be known as the industrial accident board.<sup>2a</sup> The commissioner of labor and industrial statistics shall be ex-officio a member of such board. He may, however, authorize the deputy commissioner to act in his place. Within thirty days after the passage of this act, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve four years. Thereafter such two members shall be appointed and confirmed for terms of four years each. Vacancies shall be filled in the same man-

<sup>2a</sup> The Industrial Accident Board has been superseded by the Industrial Commission of Wisconsin. See § 2394—42, ch. 485, 485, Laws of Wisconsin for 1911.

ner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In case of a vacancy, the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled. Each member of the board, including the said commissioner, shall receive an annual salary of \$5,000. This salary shall, as to the commissioner of labor and industrial statistics, be in full for his services as such commissioner of labor and industrial statistics.

Section 2394—14. Organization of Board.<sup>3</sup>—The board shall organize by choosing one of its members as chairman. Subject to the provisions of this act, it may adopt its own rules of procedure and may change the same from time to time in its discretion. The board, when it shall deem it necessary to expedite its business, may from time to time employ one or more expert examiners for such length of time as may be required, such examiners to be exempt from the operation of chapter 363 of the laws of 1905, and amendatory acts. It may also appoint a secretary, who shall be similarly exempt, and such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed. It shall provide itself with a seal for the authentication of its orders, awards, and proceedings, upon which shall be inscribed the words "Industrial Accident Board—Wisconsin—Seal." It shall keep its office at the capitol, and shall be provided by the superintendent of public property with a suitable room or rooms, necessary office furniture, stationery, and other supplies. The members of the board and its assistants

<sup>3</sup> Board superseded by Industrial Commission of Wisconsin. See § 2394—42, ch. 485 Laws Wis. 1911.

shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board; but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board, before payment is made. All salaries and expenses authorized by this act shall be audited and paid out of the general funds of the state, the same as other general state expenses are audited and paid.

Section 2394—15. Submission of Disputes.—Any dispute or controversy concerning compensation under this act, including any in which the state may be a party, shall be submitted to said industrial accident board in the manner and with the effect provided in this act. Every compromise of any claim for compensation under this act shall be subject to be reviewed by, and set aside, modified, or confirmed by the board upon application made within one year from the time of such compromise.

Section 2394—16. Notice of Hearing.—Upon the filing with the board by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing, embracing a general statement of such claim, to be given to each party interested, by service of such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the board and hearings may be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney, or any other agent, and to present such testimony as may be pertinent to the controversy before the board; but the

board may, with or without notice to either party, cause testimony to be taken, or an inspection of the premises where the injury occurred to be had, or the time books and pay-roll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time direct any employé claiming compensation to be examined by a regular physician; the testimony so taken, and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof, or any examiner appointed thereby, shall have power and authority to issue subpoenas, to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be enforced by the circuit court of any county.

Section 2394—17. Findings and Awards.—After final hearing by said board, it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its awards, which shall state its determination as to the rights of the parties. Pending the hearing and determination of any controversy before it, the board shall have power to order the payment of such, or any part, of the compensation, which is or may fall due, as to which the party from whom the same is claimed does not deny liability in good faith within ten days after the giving of notice of hearing provided for in the preceding section; and if the same shall not be paid as required by such order, the facts with respect to the liability therefor, and the determination of the board as to the rights of the parties, shall be embraced in, and constitute a part of its findings and awards; and the board shall have the power to include in its award, as a penalty for non-compliance with any such order, not exceeding twenty-five per cent. of each amount which shall not have been paid as directed thereby.

**Note by the Committee:**—These sections provide for the tribunal by which all disputes between employer and employé in regard to compensation shall be settled. In order to obtain uniformity of decisions and uniformity of administration of the bill, it was deemed necessary to have a state board. The success of this measure will depend to a great extent upon the character of the men who constitute this board. Their salary, therefore, is placed at a sum, which in the opinion of the committee, should secure thoroughly competent men; men who will have the confidence of both employer and employé, who will be in sympathy with the objects intended to be attained, and who will have ability to carry out the provisions of the act in such a manner as will meet with the approbation of both employer and employé. There undoubtedly will be a great many disputes, especially in the early administration of the bill, for this board to decide, and in order to facilitate its work, it is empowered to employ, "from time to time," expert examiners, who can take the testimony, examine the situation, and report to the board. There may be times when the board will be compelled to have several examiners for a week, two weeks, or a month at a time, and at other times it may need more. Provision of this kind is absolutely necessary. These disputes must be settled promptly and summarily, so that the injured employé may have the benefit of his compensation.

The expense of the administration of the act is fixed upon the state. The state can well afford to bear this expense, as its courts will be relieved of a large amount of work, and the burden now placed upon taxpayers by the trial of negligence cases will be minimized. This committee hopes that the tendency of this act will be to produce good will between employer and employé, and to lessen the cases of hardship among dependents of injured employés. In taking into consideration the state's many vital interests in the welfare of the workman and his family, this committee concludes that the state may well afford to bear the expense of the administration of this bill.

**Section 2394—18. Filing of Judgment.**—Either party may present a certified copy of the award to the circuit court for any county, whereupon said court shall, without notice, render a judgment in accordance therewith; which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

**Section 2394—19. Review by Court.**—The findings

of fact made by the board acting within its powers shall, in the absence of fraud, be conclusive; and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within twenty days from the date of the award, any party aggrieved thereby may commence, in the circuit court for Dane county, an action against the board for the review of such award, in which action the adverse party shall also be made defendant. In such action a complaint, which shall also state the grounds upon which a review is sought, shall be served with the summons. Service upon the secretary of the board, or any member of the board, shall be deemed completed service. The board shall serve its answer within twenty days after the service of the complaint, and, within the like time, such adverse party shall, if he so desires, serve his answer to said complaint. With its answer, the board shall make return to said court of all documents and papers on file in the matter, and of all testimony which may have been taken therein, and of its findings and award. Said action may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other; subject, however, to the provisions of law for a change of the place of trial or the calling in of another judge. Upon such hearing, the court may confirm or set aside such award; and any judgment which may theretofore have been rendered thereon; but the same shall be set aside only upon the following grounds:

1. That the board acted without or in excess of its powers.
2. That the award was procured by fraud.
3. That the findings of fact by the board do not support the award.

**Note by the committee:**—The finding of the commission, in the absence of fraud, is made absolutely conclusive by this section. The award is reviewable only on three grounds: (1) That the

commission acted without or in excess of its powers; (2) that the award was procured by fraud; (3) that the findings of fact by the commission do not support the award. This review does not allow any re-trial of the case as presented to the commission. The facts found by the commission are conclusive, and the review that is allowed in those cases where the findings of fact do not support the award, would occur only where the commission had not given proper consideration to the act itself. In other words, the court will review only questions of law included in grounds 1 and 3 upon which an award may be reviewed. The fraud alluded to in the second ground will be only such as was perpetrated in procuring the award and will not include false testimony of any party, because such questions all will be decided conclusively by the commission. The object of having the action to review brought against the commission is twofold: (1) If any error is made it will be an error made by the commission, the fraud of the commission that may be subject to review. Consequently, the commission should defend its own action, and this will be done at the expense of the state. (2) To relieve the party in whose favor the award was made of the expense of litigation in the circuit and Supreme Courts. This is in conformity with the practice adopted in the Railroad Rate Commission Law. The commission defends its own orders.

Section 2394—20. Remanding of Record.—Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board, for further hearing or proceedings; or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties.

Section 2394—21. Appeal from Award.—Said board, or any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the circuit court; but all such appeals shall be placed on the calendar of the Supreme



Court and brought to a hearing in the same manner as state causes on such calendar.

Section 2394—22. Fees and Costs.—No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court, but no costs shall be taxed against said board. In any action for the review of an award, and upon any appeal therein to the Supreme Court, it shall be the duty of the attorney general, personally, or by an assistant, to appear on behalf of the board, whether any other party defendant shall have appeared or be represented in the action or not. Unless previously authorized by the board, no lien shall be allowed, nor any contract be enforceable, for any contingent attorney's fee for the enforcement or collection of any claim for compensation where such contingent fee, inclusive of all taxable attorneys' fees paid or agreed to be paid for the enforcement or collection of such claims, exceeds ten per cent. of the amount at which such claim shall be compromised, or of the amount awarded, adjudged, or collected.

**Note by the commission:**—These sections provide for the proper judgment in the circuit court and the remanding of the case to the commission, and then for appeal to the Supreme court and the practice thereof.

Section 2394—23. Assignment of Claim.—No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged, or paid, be subject to be taken for the debts of the party entitled thereto.

**Note by the Committee:**—This section provides that no claim for compensation shall be assignable, this being necessary in order

to protect the injured employé and his dependents. If the claim were made assignable he could sell it for a small sum, and thus deprive his dependents of benefits to which they are entitled. The compensation also is made exempt from his debts on the same principle that wages now are made exempt. Provision also is made to limit the amount of attorney's fees. The justice and fairness of this should be conceded by all. The New York law has a provision of similar import.

**Section 2394—24. Preference of Claim.**—The whole claim for compensation for the injury or death of any employé or any award or judgment thereon, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted, but this section shall not impair the lien of any judgment entered upon any award.

**Note by the Committee:**—After a great deal of discussion this was the only security that the committee was able to devise. It seems to us to be practicable for the injured employé, and to give him the same preference that he now has for his wages.

**Section 2394—25. Third Party Liability.**—The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment of any cause of action in tort which the employé or his personal representative may have against any other party for such injury or death; and such employer may enforce in his own name the liability of such other party.

**Note by the Committee:**—This section provides for those cases where even though the injury or death be caused by the tort of a third person, still the employer must pay compensation under this act. In this section the employé is given power to elect to sue at law for the tort against the third person or to claim his compensation. If he claims his compensation, then his employer is to have the right in his own name to enforce the liability against the third person.

**Section 2394—26. Insurance Provisions.**—Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance of employers' liability, nor the right of

the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employés, or otherwise, for the payment to such employés, their families, dependents, or representatives, of sick, accident, or death benefits in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contribution, or other benefits whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company which may, in whole or in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employé, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

Section 2394—27. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law. For the purposes of this act, each employé shall constitute a separate risk within the meaning of section 1898d of the statutes.

**Note by the Committee:**—Industrial insurance is the name most commonly applied to workmen's compensation acts, and conveys the meaning that there is some plan of insurance. In the first tentative bills of this committee, the plan of insurance was brought forth, but after full and mature discussion it was decided that it would be better to leave the employer free to determine for himself the best means of taking care of the liability created. The committee felt that to lay down a plan of insurance would be to put on a limitation that might handicap employers and leave them at the mercy of a certain class of insurance companies. We recognize the great benefits to employes of what are known as sick, accident, and death benefit societies now in effect in many large institutions, and we much prefer to leave this whole matter open in such a way as to encourage the formation of these sick, accident, and death benefit societies. Under section 26 we have given to employers an opportunity to organize, under the laws of this state, mutual insurance companies to carry the new risk. Strong mutual insurance companies clearly have been shown to be the cheapest, safest, and most reliable method by which the risk herein created can be taken care of.

Section 2394—28. Release from Liability.—Any employer against whom liability may exist for compensation under this act may, with the approval of the industrial accident board, be relieved therefrom by:

1. Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per centum per annum, with such trust company of this state as shall be designated by the employé (or by his dependents, in case of his death, and such liability exists in their favor), or in default of such designation by him (or them) after ten days' notice in writing from the employer, with such trust company of this state as shall be designated by the board; or

2. By the purchase of an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employé, or his dependents, or the board, as provided in subsection 1 of this section.

**Note by the Committees:**—The mutual interests of employer and employé are safeguarded in an important way in this section. It enables the employer, who is liable for compensation and who

desires to be relieved thereof, to deposit the lump sum to cover such liability, with a trust company or with an insurance company with directions to make weekly payments as specified in this act, and thereby be released. This is also a convenience and a safeguard to the employé, as the money to be paid him is protected by state laws in such a way as to eliminate danger of loss.

**Section 2394—29. Posting of Notices.**—The board shall cause to be printed and furnished free of charge to any employer or employés such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his notice of withdrawal of such election, and the date of the filing thereof; and books in which shall be recorded all orders and awards made by the board, and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employés, by posting such notice thereof in several conspicuous places in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective; and the board shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and notices of withdrawal of election, and of the time of the filing of the same, shall conclusively be imputed to all employés.

**Note by the Commission:**—This simply provides that the Industrial Commission of Wisconsin shall furnish notices to employers

and employes of the election by the former to come within the provisions of this act. It must also furnish effective notice of the withdrawal of any election by an employer. This section also provides for the keeping of a record of employers who have filed their election, and those who have filed notice of withdrawal. A book in which the orders and awards of the commission are to be filed, is required by this section. It was deemed best by the committee that these notices of election and withdrawal should be given officially by the board, because any other plan might lead to uncertainty as to when an employé was under the act. Under any other plan the only way to determine whether an employé was within the provisions of the act would be by a suit in the courts, which would occasion long and disastrous litigation.

Section 2394—30. Appropriation.—A sum sufficient to carry out the provisions of this act is hereby appropriated out of any money in the treasury not otherwise appropriated.

§ 228. The opinion of the Supreme Court of Wisconsin sustaining constitutionality of act.—The constitutionality of this statute was determined in a suit brought by Edward G. Borgnis against the Falk Company, <sup>3a</sup>to restrain the defendant from adopting the workmen's compensation law during the continuance of the contract of employment of the complainant. The lower court sustained the contention of the complainant. There was an appeal from the decree which resulted in a reversal. The opinion of Chief Justice Winslow and the concurring opinions of Justices Barnes and Marshall are able presentations of the fundamental principles of these laws and are therefore inserted in their entirety. Says the Chief Justice:

"We are not certainly advised as to the exact ground on which the decision below was reached, but we assume that it was on the theory that the law in question was a valid law; that it was retrospective in its effect, and that if the defendant elected to become subject to the act the plaintiffs would be compelled to breach their existing contracts or submit to the terms of the act, and thus lose valuable rights; and hence that equity might

<sup>3a</sup> Borgnis v. Falk Company, 147 Wis. 327, 133 N. W. 209.

and should restrain their employer from electing to come under the law until their existing contracts had expired.

“It seems to be true that this action might very well be disposed of without considering the question of the validity of the act in question. Ordinarily under such circumstances that course would be the proper one to pursue, for the question of the constitutionality of a statute passed by the Legislature is not one to be lightly taken up, and generally such a question will not be decided unless it be necessary to decide it in order to dispose of the case. There are circumstances here present, however, which seem to call very loudly for immediate consideration of the question of the validity of the act in question, if under any view of the case it can be considered as involved. The legislature, in response to a public sentiment which cannot be mistaken, has passed a law which attempts to solve certain very pressing problems which have arisen out of the changed industrial conditions of our time. It has endeavored by this law to provide a way by which employer and employed may, if they so choose, escape entirely from that very troublesome and economically absurd luxury known as “personal injury litigation,” and resort to a system by which every employé not guilty of willful misconduct may receive at once a reasonable recompense for injuries accidentally received in his employment under certain fixed rules, without a lawsuit and without friction.

“A considerable number of employers have accepted the terms of the act, but unquestionably many are waiting until the question of the constitutionality of the act be authoritatively settled by this court. Nor is this attitude either blameworthy or surprising. If an employer elects to accept the act and proceeds to pay out the sums which it requires for a year or more, and then the act should be declared unconstitutional, it might

well be that he would have paid out considerable sums which under the former system he would not be required to pay at all, because he was not negligent, and that he would also be subject to suits to recover additional sums by those who, without contributory negligence, had suffered injury and had received compensation under the law. The situation is unquestionably one of much doubt and uncertainty among the great industries of the state, and it must remain such until this court has spoken. Many employers of labor who have not accepted the law have taken that course, not because they have chosen definitely to decline the terms of the law, but because they do not know whether they will be protected if they accept and act under it. Such a condition of uncertainty ought not to be allowed to exist, if it can be removed. This court can not properly decide questions which are not legitimately involved in bona fide lawsuits, but it may properly decide all questions which are so involved, even though it be not absolutely essential to the result that all should be decided. The validity of the statute in question is a matter which may be legitimately considered in the decision of this case. If the statute be unconstitutional and void, then it is certain that the plaintiffs have no cause of action, because an election to accept the terms of a void statute could harm no one. Impressed with this view of our duty under the circumstances, we advanced the present case upon the calendar, and invited argument upon the main question as to the constitutionality of the statute, not only from the Attorney General on behalf of the state, but from any attorney interested in the question. In pursuance of this invitation the Attorney General and the industrial commission filed briefs, and oral argument was made by the Deputy Attorney General. The case has been fully presented, therefore, both by brief and argument, and we are now to consider whether there be any solid foundation for



the attack made upon the law. In undertaking this task it will be necessary first to set forth in some detail its fundamental provisions.

"It adds 32 new sections to the statutes, the first 8 of which sections are as follows: \* \* \*

"By a later act passed at the same session of the Legislature (chapter 485, Laws 1911) an industrial commission, composed of three members, was created, which, among numerous other duties, is required to perform all the duties vested in the industrial accident board aforesaid, and thus the last-named board has passed out of existence. In *re Filer & Stowell Co.*, (present term) 132 N. W. 584. The act is quite long, as the complicated and delicate subject with which it deals manifestly requires, but its general purport and effect so far as this case is concerned may be briefly summarized:

"It creates an administrative board to carry its provisions into effect. It divides all private employers of labor into two classes: (1) Those who elect to come under the law; and (2) those who do not so elect. It takes away the defenses of assumption of risk, and negligence of a coemployé from the second class (except that where there are less than four coemployés the latter defense is not disturbed), but leaves both defenses intact to the first class. It prescribes the manner in which an employer may elect to come under its terms, and how an employé may make his election, and when silence on the part of the employé will be considered an election; but it does not in terms compel either employer or employé to submit to its provisions. It then provides a comprehensive scheme by which, after both parties have so elected, any substantial injury, whether the result be fatal or not, received by the employé in the course of or incidental to his employment (except those caused by willful misconduct) shall be compensated for by the employer according to certain definite rules,

which rules are to be administered by the administrative board aforesaid by means of simple procedure definitely laid down, which gives to both parties fair notice and hearing, and results in findings and an award which may be filed in the circuit court and become a judgment. It further provides that the findings of fact shall be conclusive and the award subject to review only by action in the circuit court of Dane county, in which it can be set aside only (1) if the commission acted without or in excess of its powers; (2) if the award was procured by fraud; or (3) if the award is not supported by the findings of fact. It then provides that the judgment thus rendered shall be subject to appeal to the Supreme court.

"For all the essential purposes of this discussion, it may truly be said that this is the law which is before us, and the question is simply whether there is any vital part of it which the Legislature may not enact because the Constitution forbids it. It is matter of common knowledge that this law forms the legislative response to an emphatic, if not a peremptory, public demand. It was admitted by lawyers, as well as laymen, that the personal injury action brought by the employé against his employer to recover damages for injuries sustained by reason of the negligence of the employer had wholly failed to meet or remedy a great economic and social problem which modern industrialism has forced upon us, namely, the problem of who shall make pecuniary recompense for the toll of suffering and death which that industrialism levies and must continue to levy upon the civilized world. This problem is distinctly a modern problem. In the days of manual labor, the small shop, with few employés, and the stagecoach, there was no such problem, or, if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few, and the employé who exercised any reasonable degree of care was com-

paratively secure from injury. There was no army of injured and dying, with constantly swelling ranks marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come. Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our manufacturing greatness will still have to be paid in human blood and tears. To speak of the common-law personal injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty.

"In approaching the consideration of the present law, we must bear in mind the well-established principle that it must be sustained, unless it be clear beyond reasonable question that it violates some constitutional limitation or prohibition. That governments founded on written constitutions which are made difficult of amendment or change lose much in flexibility and adaptability to changed conditions there can be no doubt. Indeed that may be said to be one purpose of the written constitution. Doubtless they gain enough in stability and freedom from mere whimsical and sudden changes to more than make up for the loss in flexibility; but the loss still remains, whether for good or ill. A constitution is a very human document, and must embody with greater or less fidelity the spirit of the time of its adoption. It will be framed to meet the problems and difficulties which face the men who make it, and it will generally crystallize with more or less fidelity the political,

social and economic propositions which are considered irrefutable, if not actually inspired, by the philosophers and legislators of the time; but the difficulty is that, while the Constitution is fixed or very hard to change, the conditions and problems surrounding the people, as well as their ideals, are constantly changing. The politics or philosophical aphorism of one generation is doubted by the next, and entirely discarded by the third. The race moves forward constantly, and no Canute can stay its progress.

"Constitutional commands and prohibitions, either distinctly laid down in express words or necessarily implied from general words, must be obeyed, and implicitly obeyed, so long as they remain unamended or unrepealed. Any other course on the part of either legislator or judge constitutes violation of his oath of office; but when there is no such express command or prohibition, but only general language, or a general policy drawn from the four corners of the instrument, what shall be said about this? By what standards is this general language or general policy to be interpreted and applied to present day people and conditions? When an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind in the light of eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes.

"(1) Where there is no express command or prohibition, but only general language or policy to be considered, the conditions prevailing at the time of its adoption must have their due weight; but the changed social, economic, and government conditions and ideals of the time, as well as the problems which the changes have produced, must also logically enter into the consideration, and become influential factors in the settle-

ment of problems of construction and interpretation. These general propositions are here laid down, not because they are considered either new or in serious controversy, but because they are believed to be peculiarly applicable to a case like the present, where a law which is framed to meet new economic conditions and difficulties resulting therefrom is attacked principally because it is believed to offend against constitutional guaranties or prohibitions couched in general terms, or supposed general policies drawn from the whole body of the instrument.

“Passing to the consideration of the contentions made in the present case, we note in limine that this is not a compulsory law. No employer is compelled to pay damages to an employé without having had his day in court. It is true that the argument is made that the law is practically coercive; but that argument is not regarded by us as sound, and will be taken up and treated later in this opinion. We are therefore relieved from all consideration of the question whether a compulsory compensation act offends against those clauses of the state and federal constitutions which guarantee all citizens against the deprivation of property without due process of law. This would be a question of greater difficulty than those which are presented in the present case. It was decided in the affirmative by the Court of Appeals of New York (*Ives v. S. B. Ry. Co.* 201 N. Y. 271, 94 N. E. 431), and in the negative by the Supreme Court of Washington (*State ex rel. Clausen* [Sept. 27, 1911] 117 Pac. 1101), and we express no opinion upon it.

“The contention which naturally seems to come first in order is the objection that the whole first section, abolishing the defenses of assumption of risk and negligence of a fellow servant, is void, because, as it is said, public policy does not require their abrogation in any but the hazardous trades; it being admitted that in these

last-named trades these defenses may properly be abolished.

“(2) The term “public policy” is frequently used very vaguely, and evidently is so used here. It is, however, quite a definite thing. Public policy on a given subject is determined either by the constitution itself or by statutes passed within constitutional limitations. In the absence of such constitutional or statutory determination only may the decisions of the courts determine it. *Hartford Ins. Co. v. C., M. & St. P. Ry. Co.*, 70 Fed. 201, 17 C. C. A. 62, 30 L. R. A. 193; s. c., 175 U. S. 91, 20 Sup. Ct. 33, 44 L. Ed. 84. This court has said: “We know of no ground upon which a constitutional legislative enactment can be rightly spoken of as contrary to public policy.” *Julien v. Model B. L. & I. Assn.*, 116 Wis. 79, 92 N. W. 561, 61 L. R. A. 668. And the remark is certainly correct. When acting within constitutional limitations, the Legislature settles and declares the public policy of a state, and not the court. True, where the Legislature has not spoken on a subject, and the courts in the course of their duty have declared the principle of common law applicable thereto, public policy may be truly said to be thus created; but any public policy thus created by the courts may be at any time reversed or changed by the Legislature, provided it act within constitutional lines. The people, acting directly by means of a referendum, or through their representatives in constitutional conventions or legislative bodies, are the makers of public policy, and it is only when the people have failed to speak in these methods that the courts can be said to have power to make public policy by decision. A constitutional statute can not be contrary to public policy—it is public policy.

“The contention that a statute is unconstitutional because it is against public policy amounts to nothing more than a contention that it is unconstitutional; hence

we address ourselves directly to that question and thereby gain something in clearness of thought.

“(3) The two defenses which the Legislature has thus attempted to take away are not intrenched behind any express constitutional provision, nor were they originally created by legislative action. They were both evolved by the courts. At a time when industries of all kinds were comparatively simple and free from danger, when employ  s of a common master were few in number and generally acquainted with each other, and when a personal injury action was a rarity, it was thought not to be unreasonable that an employ   should assume those simple risks which were plainly before him, and should not be heard to complain if he were injured by the careless act of a fellow workman by whose side he had continued to work when he must have well known the nature and habits of the man. The precedent once made was generally followed, until it became buttressed by a multitude of decisions in practically all of the jurisdictions whose jurisprudence is founded upon the English common law. But, as has been pointed out earlier in this opinion, the conditions surrounding employer and employed have vastly changed during the last half century, and now the Legislature, having become convinced that new conditions call for a change in rules of liability, have declared that such a change shall be made. They have changed the rule established by the courts, because they deem another rule better fitted to deal with the problems of the time, or, in other words, because they deem it best to establish a changed public policy.

“It is frankly admitted by appellant that it is within the legislative power to make this change with regard to the hazardous trades, but not with regard to what are called the nonhazardous trades. But why not? There are, of course, some occupations which are exceptionally hazardous, and it may well be that it would be

within legislative discretion to classify these very hazardous occupations and remove the defenses as to them, while retaining them as to others less hazardous. Indeed, that very thing has been done and has been approved by the courts in this and many other states, especially in the case of railroads and to some extent with other industries. *M. I. Co. v. Kline*, 199 U. S. 593, 26 Sup. Ct. 159, 50 L. Ed. 322; Stats. Wis. § 1816, as amended by chapter 254, Laws 1907; *Kiley v. C. M. & St. P. Ry. Co.*, 142 Wis. 154, 125 N. W. 464; Stats. Wis. §§1636j—1636jj (chapter 303, Laws 1905).

[4] But because there is room for classification it does not follow that legislation without classification is unconstitutional. There are hazards in all occupations; indeed, they follow every man from the cradle to the grave. What constitutional requirement, either express or implied, clothes these court-made defenses with exceptional sanctity as to the less hazardous industries, and warns off from them the sacrilegious hand of the Legislature? We are referred to none, and we know of none. It is admitted in the *Ives Case*, *supra*, that both the fellow servant defense and the contributory negligence defense, being of judicial origin, may be changed or abolished by the Legislature. See, also, *Opinions of the Justices of the Massachusetts Supreme Judicial Court on the Personal Injuries Act of 1911*, 96 N. E. 308. We see absolutely no ground for the contention that these defenses may be lawfully abrogated as to the more hazardous industries, but must be forever held sacred as to the less hazardous industries. There may be a less persuasive reason for the change in the case of the latter class of industries, but this does not deprive the Legislature of the power to make it.

“[5, 6] But it is said that there is no proper classification here, and hence that the law is fatally discriminating in its character. The two defenses are preserved intact to employers who elect to come under the law



and taken away from those who do not so elect. The rules governing classification are familiar and are in brief as follows: It must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only and must apply equally to each member of the class. It seems to us that this classification fully meets these requirements; certainly there will be very real differences between the situation of the employer who elects to come under the law and the employer who does not. If the consenting employer only employs workmen who also elect to come under the law, he can never be mulcted in heavy damages, and will know whenever an employé is injured practically just what must be paid for the injury. Surely this is a different situation from the situation of the man who is liable to be brought into court by an injured employé at any time and obliged to defend common-law actions upon heavy claims unliquidated in their character, the outcome of which actions none can foretell. On the other hand, if, as seems quite likely, the greater part of the consenting employer's workmen consent, but some do not, and these latter are still retained in the employment, the same considerations will apply with somewhat less force. On the one hand, there is a class of consenting employers employing wholly or largely consenting workmen, and having definite and fixed obligations to their workmen in case of injury; on the other hand is a class of nonconsenting employers who have no such fixed obligations in case of injury to their workmen, but choose to meet every such workman in court and fight out the question of liability. There seems a very robust difference between these two classes. But after all there is another distinction which seems perhaps more satisfactory. The consenting employer has done his share, and it must be considered a considerable share, in rendering successful the legislative attempt to

meet and solve a difficult social and economic problem. Even if it be true (which, as before stated, is not decided) that he may not be compelled under our Constitutions, state and national, to assist in the solution of this problem, still does not his voluntary act in giving that assistance constitute a substantial distinction, making a real difference of situation between him and the employer who refuses his aid—a difference which justifies a difference in treatment?

“It seems to us that this question must be answered in the affirmative, and if it be so answered there can be no doubt as to the legitimacy of the classification, for the reason that it is quite apparent that the other conditions of valid classification are fully satisfied. There can be no doubt that the classification is germane to the purpose of the law, and it is not limited in its application to existing conditions only, and applies equally to each member of the class.

“The minor classification by which the fellow servant defense is preserved to all employers employing less than four employes in a common employment is also attacked as having no proper legal basis; but it seems to us that the grounds of classification here are more persuasive even than in the case just discussed. The man who is employed with one or two other men in a given employment in all reasonable probability knows their characteristics well, and will probably be with them a great part of the time. He will have ample opportunity to form a just judgment as to the risk of injury from their negligence which he will run if he works with them, and will be enabled to shape his own conduct accordingly; but the man who is one of a large number of men, many of whom he never sees, and some of these latter having duties to perform in distant places upon the due performance of which his own safety depends, has no opportunity to acquire any accurate knowledge of the characteristics of many of his fellow workmen,

and can not intelligently decide what risk he runs at the hands of such distant and unknown employés. The difference in situation is not merely fanciful; it is real. In one case, the employé knows or has the means of knowing what to expect from his colaborers; in the other case, he has neither the knowledge nor the means of knowledge. Of course, there will be cases on the border line, where the difference in situation will be very slight, or perhaps entirely nonexistent. There will probably be no practical difference between the situation of the man who is one of four or five employés in a given employment and the situation of the man who is one of three; but this does not militate against the legitimacy of the classification. This is a necessary defect in all cases of classification based upon numbers. The question is not whether there may be some on one side of the line whose situation is practically the same as that of some on the other side, but whether there "is a distinction between the classes as classes, whether there are characteristics which, to a greater degree, persist through the one class than in the other which justify legal discrimination between them." *State v. Evans*, 130 Wis. 381, 110 N. W. 241.

"[7] Passing from these questions of classification, we meet the objection that the law, while in its words presenting to employer and employé a free choice as to whether he will accept its terms or not, is in fact coercive, so that neither employer nor employé can be said to act voluntarily in accepting it. As to the employer, the argument is that the abolition of the two defenses is a club which forces him to accept; and as to the employé, the argument is that if his employer accepts the law the employé will feel compelled to accept also, through fear of discharge if he do not accept.

"Both of these arguments are based upon conjecture. Laws can not be set aside upon mere speculation or conjecture. The court must be able to say with certainty

that an unlawful result will follow. We do not see how any such thing can be said here. No one can say with certainty what results will follow in the practical workings of the law. It may well be that many manufacturers, especially those employing small numbers of employés and in the less dangerous trades, will deliberately conclude that it will be better business policy to exercise greater care in guarding their employés from possible danger and greater discrimination in the employment of careful men, and reject the law entirely, running the risk of being able to prevent all or nearly all accidents. It seems extremely probable that the great bulk of workmen, especially of the unskilled classes, will be glad to come under the act and thus secure a certain compensation in case of injury, in place of that very uncertain and expensive thing, namely, the final result of a lawsuit; but whether this be so or not, it may be considered as reasonably certain that very many will elect to come under the act voluntarily and freely, and that those who do not will probably come from the ranks of skilled labor, who will deem the rates of compensation under the law as entirely inadequate or will be careful workmen in the less dangerous trades, who will see no gain in bartering their common-law rights for the restricted remedies furnished by the statute. It can not be said with any certainty that such men will be discharged for their failure to voluntarily come under the law. The probability would seem rather to be that they would be of a class which the employer would wish to keep in his employ, notwithstanding their attitude toward the law. These matters are, however, purely speculative and conjectural. None can say what the practical operation of the law will be. It is enough for our present purpose that no one can say with certainty that it will operate to coerce either employer or employé.

“[8] We thus reach the conclusion that there are .

no valid constitutional objections to the first section of the law in question, and this conclusion obviates the necessity of any consideration of the provisions of section 2394—32, which aims to preserve the balance of the law intact in case the whole or some part of section 1 should be considered invalid. We may say in passing that we know of no good reason why the Legislature may not declare its intention that one part or section of a law is not a compensation for and that it may be separated from the balance of the act for the very purpose of saving such balance from being invalidated in case the first-named part or section be held unconstitutional. We think it would take a very extreme case of palpable absurdity or falsity in such a provision to justify any court in declaring such a declaration of legislative intent ineffective, if indeed a court could make such a declaration at all.

“[9] The next important contention is that the law is unconstitutional because it vests judicial power in a body which is not a court and is not composed of men elected by the people, in violation of those clauses of the state Constitution which vest the judicial power in certain courts and provide for the election of judges by the people, as well as in violation of the constitutional guaranties of due process of law. It was suggested at the argument that the Industrial Commission might perhaps be held to be a court of conciliation, as authorized to be created by section 16 of article 7 of the state Constitution; but we do not find it necessary to consider or decide this contention. We do not consider the Industrial Commission a court, nor do we construe the act as vesting in the commission judicial powers within the meaning of the Constitution. It is an administrative body or arm of the government, which in the course of its administration of a law is empowered to ascertain some questions of fact and apply the existing law thereto, and in so doing acts quasi judicially;

but it is not thereby vested with judicial power in the constitutional sense.

"There are many such administrative bodies or commissions, and with the increasing complexity of modern government they seem likely to increase rather than diminish. Examples may be easily thought of. Town boards, boards of health, boards of review, boards of equalization, railroad rate commissions, and public utility commissions all come within this class. They perform very important duties in our scheme of government, but they are not Legislatures or courts. The legislative branch of the government by statute determines the rights, duties, and liabilities of persons and corporations under certain conditions of fact, and varying as the facts and conditions change. Manifestly the Legislature can not remain in session and pass a new act upon every change of conditions; but it may and does commit to an administrative board the duty of ascertaining when the facts exist which call into activity certain provisions of the law, and when conditions have changed so as to call into activity other provisions. The law is made by the Legislature; the facts upon which its operation is dependent are ascertained by the administrative board. While acting within the scope of its duty, or its jurisdiction, as it is sometimes called, such a board may lawfully be endowed with very broad powers, and its conclusions may be given great dignity and force, so that courts may not reverse them unless the proof be clear and satisfactory that they are wrong. *M., St. P. & S. S. M. R. Co. v. R. R. Com.*, 136 Wis. 146, 116 N. W. 905, 17 L. R. A. (N. S.) 821. Not only this, but many such boards are created whose decisions of fact honestly made within their jurisdiction are not subject to review in any proceeding. *State ex rel. v. Chittenden*, 112 Wis. 569, 88 N. W. 587; *State ex rel. v. Wharton*, 117 Wis. 558, 94 N. W. 359; *State ex rel. Cook v. Houser*, 122 Wis.

534-561, 100 N. W. 964; *State ex rel. v. Trustees*, 138 Wis. 133, 119 N. W. 806, 20 L. R. A. (N. S.) 1175. It is important to notice the limitation contained in the last sentence. The decision of such a board may be made conclusive when the board is acting within its jurisdiction, not otherwise. Hence the question of its jurisdiction is one always open to the courts for review. It can not itself conclusively settle that question, and thus endow itself with power. If no appeal from its conclusions be provided, the question whether it has acted within or exceeded its jurisdiction is always open to the examination and decision of the proper court by writ of certiorari. The instances where the question of jurisdiction of such bodies has been examined and decided in certiorari actions are so numerous that it seems unnecessary to cite them. In such cases it is considered that clear violations of law in reaching the result reached by the board, such as acting without evidence when evidence is required, or making a decision contrary to all the evidence, constitute jurisdictional error, and will justify reversal of the board's action, as well as the failure to take the proper steps to acquire jurisdiction at the beginning of the proceeding. *State ex rel. Augusta v. Losby*, 115 Wis. 57, 90 N. W. 188.

"Thus, in the case before us, the jurisdiction of the Industrial Commission to entertain any claim for compensation under the act rests upon two facts which must exist, viz.: (1) That both employer and employé have elected to come under the act; and (2) that the injury was received in service growing out of or incidental to the employment as the result of accident, and not of wilful misconduct.

"[10] The Industrial Commission must, of course, decide these questions in any case where they are raised; but it cannot decide them conclusively, for they are jurisdictional questions on which its right to act at all depends. They must be open to review in some court of

competent jurisdiction; otherwise, the parties would be denied due process of law. The tribunal only has authority over those who have voluntarily elected to give it authority, and if it can decide finally that a man has given consent, when he has not, it assumes the functions of a court. If the act before us took away from the courts the power to consider these jurisdictional questions, either expressly or by necessary implication, the contention that judicial power had been vested in the commission, contrary to the command of the Constitution, would be of greater force; but we think that the act does not do this, or attempt to do it. True, it says that the findings of fact made by the commission shall, in the absence of fraud be conclusive; but it provides for an action in the circuit court of Dane county, in which the board's award may be set aside upon either of three grounds, viz.: (1) That the board acted without or in excess of its powers; (2) that the award was procured by fraud; and (3) that the findings of fact do not support the award.

"[11] We regard the expression "without or in excess of its powers" as substantially the equivalent, or at least as inclusive of the expression "without or in excess of its jurisdiction," as those words are used in certiorari actions to review the decisions of administrative officers and bodies. We know of no other construction that can be logically given to them, and it seems to us that they were designedly and advisedly inserted by the framers of the bill to meet the very objection which is now made. With this construction, it is certain that the constitutional powers of the courts have not been invaded, and that no man without his consent can be brought under the law or is deprived of his right to "due process of law" thereby.

"There are some further objections which will be more briefly considered. It is said that, even if it be held that the act is not coercive, still when employer and em-



ployé consent to come under the law they in effect wholly stipulate away their rights to resort to the courts, and that such agreements are void, citing *Fox v. M. F. A. Assn.*, 96 Wis. 390, 71 N. W. 363. The case cited, however, recognizes the companion principle that agreements to arbitrate special matters, such, for instance, as the amount of the loss under an insurance policy (or, as in the present case, the extent of an injury or disability, and the like), which do not go to the whole groundwork of the controversy, are universally sustained. As we have seen, these special matters are the only matters which the board may conclusively decide under this law. If there be a controversy as to fundamental rights, namely, whether the parties have consented, or as to whether the injuries resulted from wilful misconduct, these issues are still open to the court upon the appeal.

“In considering the question as to how far consent may go in matters of this kind, a case not cited in the briefs or mentioned in the oral argument should, we think, be referred to here, viz., the case of *Van Slyke v. Insurance Co.*, 39 Wis. 390, 20 Am. Rep. 50. In this case it appeared that the Legislature had passed a law providing that in case of the filing of an affidavit of prejudice against a circuit judge the parties might, if they chose, stipulate that a member of the bar should act as judge and try the case, with all the powers of the regularly elected judge of the court. Acting on this law, the parties in the case agreed that Mr. John J. Cole should try the case, and he did so, rendered judgment for the plaintiff, and the defendant appealed. The court held (Chief Justice Ryan writing the opinion) that the Constitution having vested all the judicial power of the state in the courts, and provided for the election of judges for such courts, the Legislature could confer no judicial power on other officers or persons, nor authorize the parties to an action to do so; hence there was no trial before a court, and no judgment. The

question as to whether the defeated party might not be prevented from raising any objection by his voluntary waiver was not considered or mentioned; but in any event the case has no bearing here, and is only mentioned in order to show that it has not been overlooked. It only decides that neither the Legislature nor private parties can make a judge out of a private citizen, and endow him with the power to hold a court, contrary to the direct command of the Constitution. As the commission in the present case is not a court, but simply an administrative board, the doctrine laid down in the case cited has no application.

“[12] Again, it is said that the act compels municipalities to levy taxes for other than public purposes, since all workmen injured in the employ of the public are to be compensated, and thus taxpayers will be deprived of their property without due process of law. We have not been quite able to appreciate the force of this point, and we find no argument upon it in the brief. We shall only say that the manner in which the state or the public shall treat its workmen is peculiarly a matter for the Legislature to determine. No one is compelled to work for the public, and, if he does, he takes his situation on the terms which the public gives. We know of no reason why the public, acting by its lawmaking power, may not provide that its employés shall have as part of their compensation certain indemnities in case of accidental injury in the public service. When a law does so provide, the raising of the funds to discharge those indemnities becomes plainly a proper public purpose.

“[13] Objection is made to those clauses of section 2394—16 which provide for the giving of notice of claim by mail, and allow testimony to be taken without notice to either party, and the claim is made that this is not “due process of law.” Were the commission a court, these objections would probably deserve serious consid-

eration, especially the latter one. But, as we have seen, the commission is an administrative board merely. It is common knowledge that such boards are frequently given power to investigate and determine facts without notice to the parties of each successive step in the proceedings. The proceedings before such boards are not expected to be as formal and cumbrous as the proceedings of courts; indeed, the greater flexibility which such bodies must possess if they are to discharge their duties seems to demand greater freedom of action. If notice, either actual or constructive, of the commencement of the proceedings before such a body be required to be given to the parties interested, and they be given full and free opportunity to be heard and present evidence, it is generally held sufficient, even though notice of intermediate steps in the proceeding be not required or given. *Schintgen v. La Crosse*, 117 Wis. 158, 94 N. W. 84. In case of a board like the present, which only acts on the rights of parties who have consented that it may so act, the reason of the rule is far stronger.

“[14] Some contention is made in the brief that minors can not be treated in the same manner as adults, and that the provisions of the law which declares that a minor who is legally entitled to work shall have the same power of contracting for service as an adult is objectionable, because it allows the employer to decide whether the law shall treat his minor employés as adults. The objection seems to us fanciful and elusive. There is no claim that the Legislature may not endow minors with the right to make contracts otherwise lawful, and, if this be so, it seems to us to be the end of the discussion. After the minor is so endowed, he becomes for the purposes of the act an adult, or at least on the same plane. No adult employé of a private employer can elect to come under the act unless his employer has first elected to do so. So the employer has the power to decide whether any of his employés, infant or adult,

shall have the privileges of the act if they continue to work for him. This is practically all there is of the matter, and we see no substantial distinction between the effect of the law upon the adult and its effect upon the minor.

"The foregoing considerations are believed to fully meet and dispose of all the objections made to the law which could reasonably be claimed to be fatal to the entire law if sustained. There are many objections made to single sections or clauses of the law, which we do not find it necessary or advisable to treat at this time. Even should some or all of them be sustained, it is our judgment that the sections or clauses so questioned could not be said to be so far compensations for or inducements to the balance of the law that the entire law must fall. In our judgment it is better to reserve these questions for consideration when an actual case arises which calls for the decision of the court upon them. It is well-nigh impossible for the human mind to call up and contemplate in advance all the considerations which ought to be considered in passing upon the validity of the various incidental clauses of a new and complicated law. The concrete case and its actual circumstances and effects are apt to throw much light upon the question and suggest considerations wholly unthought of when viewing the matter abstractly in advance of any actual experience.

"Among these contentions, which we now pass without decision, perhaps the most important is the contention that so much of section 2394—16 as provides that the board or any member thereof, or any examiner appointed thereby, shall have power to issue subpoenas, obedience to which shall be enforced by contempt proceedings in the circuit court. This seems to present a serious question, worthy of careful examination, and we intimate no opinion upon it now.

"Other minor contentions, which we do not consider

it necessary or advisable to pass upon now, are to the effect that the clauses are void which empower the commission (1) to declare and enforce penalties against the employer for failure to perform certain orders of the board made pending hearing (section 2394—17); (2) to set aside or modify contracts of settlement previously made by the parties (section 2394—15); and (3) to regulate the amount of contingent attorney's fees and permit one claimant to make a contract which it may refuse to allow another to make (section 2394—22).

“[15] Before closing, we shall briefly refer to another question which was not much discussed on the argument, namely, the question whether the law applies or was intended to apply to persons who, like the plaintiffs, are employed under contracts of service made prior to the passage of the law, and which do not expire until some definite date in the future, and, if so, whether the law can apply to them without impairing the obligations of their contracts, and thus violating the Constitution. As to the first branch of this question, we think that the language of the act leaves no doubt as to the intention of the Legislature. The entire act by express terms was to become effective September 1, 1911. Its provisions are broad, and without express exception, read according to their grammatical meaning, they include all employers and employes who occupy those relations at the time the law becomes effective. If there was an intention to exclude any from its terms, that intention has been carefully concealed. We conclude that it was intended to include all employers and employes, whatever the term of service. The question whether the act as so construed affects an existing contract of service expiring at some distant period in the future is easily answered in the negative, as it seems to us. Certainly the law does not affect the service to be rendered, or the wages to be paid in any way. Neither the obligation of the workman to faithfully do his work, nor

the obligation of the employer to faithfully pay the stipulated wage, nor the remedy in case of breach by either party, is in any way affected. What, then, is affected? Plainly no provision of the contract; but, if the employer elects to come under the law, the employé must choose whether he will come under it or not, and if he does not wish to come under it he may run the risk of being discharged, or if he wishes to retain his employment he may feel compelled to elect to come under the law, and thus lose his right to bring an action at law in case of a personal injury sustained in the employment.

“[16] But all this does not in any way affect the contract of employment. That remains absolutely unimpaired in all its terms. The right to bring an action in the future in case of a possible tort not yet committed is no part of the contract of employment. That right arises out of the relation of employer and employé, and is subject to change by the lawmaking power at any time. The employer does not contract that it shall remain intact. There is no vested right in a mere remedy for a hypothetical wrong. At most the law can not be said to do more than change the remedy for a tort which is yet to happen, and may never happen. The Legislature may change the remedies for torts yet to be committed at any time, and such changes can not be said to make any change in mere contracts of service existing between the parties. This seems very patent. The Legislature has at many times within the last two decades passed laws very materially changing the liabilities of employers to employés for injuries resulting from the negligent acts of the employer: e. g., the laws requiring the protection of machinery, abolishing assumption of risk in such cases, abolishing the coemployé rule as to railway companies, and changing the rules as to contributory negligence. In no case has the claim ever been made that these laws in any way affected or impaired existing contracts of service for

terms expiring in the future although many cases must doubtless have occurred where those laws were applied to parties who were under such contracts.

“We have now discussed all of the contentions made against the law which we deem entitled to detailed treatment, and we find no serious difficulty in sustaining its fundamental and essential provisions. As said in the beginning of this opinion, this law forms the answer of the Legislature to a very widespread demand. It is a legislative attempt to reach within constitutional lines some fair solution of a serious problem which other nations, not restricted by written constitutional inhibitions, have solved or partially solved years ago. Doubtless the law will need and will receive changes and amendments as time shall test its provisions and demonstrate its weak points. It would be unreasonable to expect that a law covering so important a subject along lines not before attempted should be perfect, or very near perfect, upon its first enactment. If experience shall demonstrate that it is practicable and workable, and operates either wholly or in great measure to put an end to that great mass of personal injury litigation between employer and employé, with its tremendous waste of money and its unsatisfactory results, which now burdens the courts, the long and painstaking labors of those legislators and citizens who collaborated in framing it will be fittingly rewarded by a result so greatly to be desired. That result will mean a distinct improvement in our social and economic conditions.

“The effect of our conclusions upon the result in the present case is yet to be considered. The complaint was sustained, and the injunction granted, on the ground apparently that, the law being valid, the plaintiffs would be greatly injured if their employer elected to become bound by it, because they would be obliged either to break their existing contracts or lose their common-law remedies for their employer’s torts. Granting all that

plaintiffs claim as to the necessary results of their employer's election, it is very certain that no irreparable injury results to them. If their employer breaks his contract of employment because they decline to accept the new law, they have adequate legal remedies for the recovery of damages. If, on the other hand, they elect to come under the law themselves, they lose no vested or contract right, and are not damaged in the eyes of the law by the change in their remedies for future torts. In either event there is no cause of action in equity, and no ground for an injunction. The complaint should have been dismissed on the pleadings.

"Judgment reversed, and action remanded, with directions to dismiss the complaint.

"Mr. Justice Barnes in his concurring opinion said: I concur in the opinion of the Chief Justice, except in so far as it is said in effect that our Constitutions may mean one thing today and something different tomorrow, depending on whether conditions and ideals have in the meantime undergone a change. I regard our Constitutions as immutable, except when changed in the manner therein prescribed. Judges, in interpreting our fundamental laws, may at one time reach conclusions different from those which would be reached at another time. This does not argue that the constitutional provision under consideration has undergone any change, but demonstrates that judges, being finite beings, made a mistake at one time or the other. No act of the Legislature should be declared unconstitutional unless it is clearly so. This is elementary. By hewing closely to this line, there is little danger of the courts committing any serious blunders in interpreting our organic laws. If a legislative act, measured by this standard, trenches on the Constitution, it should be held void, regardless of whether or not the provision violated is out of harmony with twentieth century conditions and ideals. To hold otherwise is to say that the courts may change our



fundamental laws. This would be a clear usurpation of power, never vested nor intended to be vested in the courts, and one which was reserved to the people themselves. I am a firm believer in constitutional government. I do not share the belief that our Constitutions have become archaic, or that they have outlived their usefulness. If the opinion of the court is intended to mean that it is a doubtful question whether our Constitutions should be preserved or thrown in the "scrap heap," I do not agree with it.

Said Mr. Justice Marshall in concurrence: The result, itself, meets with my unqualified approval. Some language in the court's opinion, however, respecting the Constitution, I fear will be construed in a different way than the writer thereof, or any member of the court, intended or would sanction, tending to impair the lofty character of the fundamental law as significantly maintained by this court. I am not alone in that. Other language appears which does not express my personal views. True, none of such is matter of decision or even judicial dicta, but, if left unchallenged, it is liable to misleadingly indicate a trend of judicial thought here which, I am safe in saying, does not exist. I choose to avoid responsibility therefor. It, seemingly, is my duty to do so. In discharging that duty I wish not to take from the dignity of the court's able opinion on the vital questions presented for solution. I do not understand they involved any new constitutional, or any, question of difficulty, giving rise, under any circumstances, to desire a broader fundamental spirit than has been long firmly entrenched in the jurisprudence of this country.

"The law approved is a very mild piece of legislation. While I would not suggest it is too moderate for now—for that is not within my province—yet I would not indicate that the Legislature responded as fully as it might to the need for a system as directly as practicable, laying the personal injury burdens of production upon the

things produced where they belong, as should have been efficiently recognized long ago, and would have been had the lawmaking power appreciated that it is its province, not that of courts, to cure infirmity in the law. If criticisms, unjustly and freely directed toward the latter and the human instrumentalities thereof, merely because of their fidelity to duty to maintain the laws as given, had been turned upon the former for failure to better conserve human happiness in the industrial field in the light of twentieth century conditions, untold suffering might have been prevented, which only the people's representatives could prevent. Tardy recognition of such duty casts no reflection upon legislative actors of today. Who can say but that they would have had the same ideals as now, and effected the same results long ago if opportunity had been offered them to do so? It has been, in the past, far easier to criticise a power which was helpless to supply a remedy, than to suggest one or move legislative power to adopt one.

"I am constrained to write the foregoing to give deserved credit to the patient, earnest, efficient labor of the lawmakers who placed the enactment in question upon the statute book of this state. It would give them too little credit to record, merely, that they bowed to public demand, and too little credit to this court to leave room for the thought that it has been influenced by any such demand to give the Constitution any new shade of meaning to sustain the enactment, or that it would change, or arrogate to itself power or disposition to change, fundamentals in any sense, by judicial interpretation.

"As to the subject of the enactment, advanced thinkers in economics, law and legislation have been at the front and the public has been slow to follow. It took the industrious, able, patient, tactful legislative committee over two years of activity, to educate the people up to willingness to accept on trial the mild law before us.

Opposition had to be overcome by education on all sides. The Legislature responded, not so much to a general demand, as to a constitutional command, to conserve, in the light of the present, the public welfare.

“The remarks in the court’s opinion which may suggest to some that a different meaning is to be read out of the Constitution now than formerly; that it may have meant one thing when framed and later another, and now be held differently, according to judicial interpretation to meet social necessities as recognized by human instrumentalities in the particular environment—probably was not so intended, but I sense danger of a contrary impression going out. Such ability to bend the fundamental law in the name of judicial interpretation—the idea that an eighteenth century construction for an eighteenth century condition may not, and at the hands of the court does not have to, fit a twentieth century condition—has been advanced by some, but not, significantly at least, by any court. On the contrary, it has met with universal condemnation. That it is wrong, every man of eminence that has ever written upon the subject in the past, as well as the very nature of the case and the very logic and limitations of judicial interpretation, bear witness. The fertile method of dealing with the Constitution has been characterized as one which has “furnished a mode of argument which would on the one hand leave the Constitution crippled and inanimate, or on the other give it an extent of elasticity subversive of all rational boundaries.” Story, Constitution, 389.

“Manifestly, there can be but one right interpretation or construction of the Constitution. It is said to have been constructed of general declarations, so that, in letter and spirit, it might abide indefinitely and would have to so abide, dealing with all conditions and all ages, except as amended in the manner therein specified. Considerately with that, there can be but one viewpoint for interpretation, and that is the one from which the fram-

ers of the system builded. That is unmistakably indicated in *Marbury v. Madison*, 1 Cranch 137, 2 L. Ed. 60; *Martin v. Hunter*, 1 Wheat. 304, 4 L. Ed. 97.

"We speak of the Constitution in a general sense—the American system, commencing with the federal model and including the state Constitutions framed in harmony therewith. In all writings thereon, from Chief Justice Marshall to date, the idea that it can not be properly judicially changed to suit the notions of the times, and that there will appear little need therefor when the real nature thereof is comprehended, is made prominent. It was that idea, largely, which moved one eminent writer to speak of it as the "greatest single achievement of the eighteenth century," and another to characterize it as the "most wonderful work ever struck off at a given time by the brain and purpose of man." Truly, it can not be said of that which was so unequaled in the eighteenth century, and, we may well add, was unequaled in the nineteenth and has been since, that it can take the cast, so to speak, from time to time of its environment as judicial instrumentalities may view it through the vista of conditions in *præsent*i. All history says no. The very inconsistency of the contrary says no. The absence of any necessity for, and the destructive danger of, any such quality, say no.

"A new remedy for a new condition within the boundaries of reason is within legitimate police authority. Who could wish more? How could more exist and human liberty—natural, inherent rights—be safe? Would it not be well to recur to the classic rule for testing legitimacy of legislative enactments, given by the most eminent judicial expounder of the Constitution of which the history of American jurisprudence bears record:

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not

prohibited, but consist with the letter and spirit of the Constitution, are constitutional.' *McCulloch v. Maryland*, 4 Wheat. 316, 421, 4 L. Ed. 579.

"With that and the significance of the declared purpose and central thought of the Constitution in mind, much of the supposed difficulty which has stimulated suggestions of competency to, and necessity for, bending it by a usurpatious method of interpretation, will disappear.

"How are we to determine when the purpose of a law in the field of police power, and unaffected by any express prohibition, is legitimate? It seems the answer is easy. Look first to the purpose of the Constitution, found in the declaration, "Grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect union, insure domestic tranquility and promote the general welfare" we "do establish this Constitution." Then to the central thought—the very superstructure—upon which the whole was builded: "All men are born equally free and independent and have certain inherent rights, among those are life, liberty and the pursuit of happiness." There is voiced a broad spirit, covering as this court has, in effect, many times said, a field as limitless as are human needs. The language was not used for mere rhetorical ornamentation or effect, but to suggest the permissible scope of legislation in the zone of general welfare, its extent and its limitations. *Durkee v. Janesville*, 28 Wis. 464, 9 Am. Rep. 500; *State, etc., v. Kreutzberg*, 114 Wis. 530, 90 N. W. 1098, 58 L. R. A. 748, 91 Am. St. Rep. 934; *State, etc., v. Redmon*, 134 Wis. 89, 114 N. W. 137, 14 L. R. A. (N. S.) 229, 126 Am. St. Rep. 1003; *Bonnett v. Vallier*, 136 Wis. 193, 116 N. W. 885, 17 L. R. A. (N. S.) 486, 128 Am. St. Rep. 1061.

"So here, as it seems, the initial question was this: Is the purpose of the law legitimate, within the broad dominating spirit mentioned? The answer must be yes.

as the manifest purpose is to promote every element of the central thought of the Constitution. Anything fairly within that has always been and must, necessarily always, be held legitimate. Keeping in mind that in the selection of means the Legislature has a very broad comprehensive field in which to freely make a choice, the next question is, are the means contemplated reasonably appropriate to the end to be attained? Not are they the best means, but are they proper means, in that they are not within any express prohibition and tend to conserve rather than to destroy? All must agree in the affirmative on that in harmony with the best thought of all the more civilized nations of Europe. The difficulty here has been, want of appreciation of the great economic truth, that personal injury losses incident to industrial pursuits, as certainly as wages, are a part of the cost of production of those things essential to or proper for human consumption, and the more direct they are incorporated therein, the less the enhancement of cost and the better for all.

“True, the old remedies for losses mentioned have been inefficient and wasteful. They are, economically speaking, unscientific and have always been. It is more apparent now than formerly by reason of greater and more numerous modern activities and methods, that is all. In truth, the infirmity from an economic standpoint, and from the standpoint of man's duty to his fellow men, has always existed, though the quantum of regrettable results and useless waste has greatly increased by the multiplication of human activities and physical instrumentalities.

“So it will be seen, I think, that while particular means may be reasonably appropriate to a legitimate purpose under some conditions characterizing a particular period, and not have been at a prior time, no change in the Constitution is involved in remedying the misfit. The end being proper the legitimacy of means may be

dependable upon conditions, the question turning more on matter of fact than anything else. The change of mere means does not require a fundamental change, so long as legitimacy of end and reasonable appropriateness of means shall be kept efficiently in view.

“Want of appreciation, in my judgment, of the Constitution from the viewpoint suggested, has led some to advocate judicial changes to meet new conditions, while others have insisted that many amendments, made in the prescribed way, practically substituting a new system for that of the fathers, are necessary or advisable, and still others have maintained the broad liberal view suggested, which was early entrenched in the jurisprudence of this county by the judicial writings of Chief Justice John Marshall. That idea renders changes of any kind unnecessary to legislative competency to legislate to any extent which reasonably promotes a constitutional object. Anything further would destroy, or tend to destroy, instead of promote public welfare. Such idea is the safe one and the right one from the viewpoint, I think, of the fathers. It is the one sturdily maintained by this court. It is the one I feel competent to say, all members of this court would now maintain and that nothing in its opinion should be otherwise taken.

“If the Constitution is to efficiently endure, the idea that it is capable of being resquared, from time to time, to fit new legislative or judicial notions of necessities in *præsenti*, instead of new legislation being tested by it, must be combated whenever and wherever advanced, and wrong impressions in regard to the matter carefully guarded against. To even, significantly, speak of making the Constitution adaptable to new conditions by means of interpretation, when the selection of new and constitutional means, adaptable to such conditions, is meant, is liable to confuse and weaken that high regard all should have for the fundamental law as a broad,

definite, certain, comprehensive, unvarying and unvariable system, other than by the means therein pointed out. Dark will be the day, if that day will ever come, for the people of this country, and dark to the people of all countries whose attention is directed here for lessons in constitutional government, when our system shall not be held up by the courts as speaking the same at one time as at another, except in so far as changes shall be made in the particular way. That is the doctrine of *Marbury v. Madison*, 1 Cranch 137, 2 L. Ed. 60. No one can read that great exposition of our system without appreciating how illogical it is to speak of interpretation as an instrumentality for giving, from time to time, a different cast to the fundamental law. The whole spirit of the court's logic condemns such reasoning as heresy. Note the significance of this: "The exercise of this original right" to make a system of government "is a very great exertion, nor can it, nor ought it to be frequently repeated. The principles therefore, so established, are deemed fundamental, and as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent." In that connection the court added, in unanswerable logic, that the Constitution is not only the paramount law, but is absolutely unchangeable by ordinary means; that laws adaptable to it are legitimate, and laws so-called, not so adaptable, are not laws at all. It was designed to govern the Legislature and the courts as well. That conception is of something high above either Legislatures or courts, to vary it. How can that be done by indirection, miscalled interpretation and construction—a method of rounding a syllogism with a conclusion based on false premises. Interpretation of that sort would enable courts to evade and render useless the most carefully drawn enactments whether of fundamental or subsidiary law.

"So, in short, I think the law in question is a reason-



ably appropriate means to effect a constitutional purpose; that the Constitution needs no bending whatever in order to sustain it in its essential features, and none would be proper if the contrary were the case.

“The foregoing I can but regard out of harmony with this, in its letter: “Changed social, economic and governmental conditions and ideals of the time, as well as the problems the changes have produced, must largely enter into the consideration and become influential factors in the settlement of problems of construction and interpretation”—so far as it is pregnant with the thought that the fundamental law is judicially changeable. The words “problems” of “construction” and “interpretation” I think were unfortunately used, if the thought was merely of problems of whether new enactments to cope with new conditions are within or without the legitimate field of legislative activity, having regard to appropriateness of means to effect a constitutional end. The latter might be, as I have suggested, at one time and not a half century theretofore, because changed conditions may render an end legitimate, within the unchangeable scope of the fundamental law, which earlier was not, or the selected means to effect that end might be reasonably appropriate at one time, though not so a century, more or less, theretofore.

“Why treat judicial interpretations of law as a process of following changing ideals, social problems and ideas, since its sole office is to solve uncertainties as to the intent at the time of the enactment? Interpretation commences where begins uncertainty—obscurity as to the meaning the lawgivers purposed putting into the enactment and succeeded, discoverably, in expressing, literally or inferentially. In short, the gist of the matter is the intent when the law was made, not what one can make the language say in a different environment from that of its origin to accomplish a desired purpose. No bending is permissible for the latter purpose, but for the

former the very letter may have to give way to the spirit. *State, etc., v. Ryan*, 99 Wis. 123, 74 N. W. 544; *State, etc., v. R. R. Comm.*, 137 Wis. 80, 117 N. W. 846; *State, etc., v. Phelps*, 144 Wis. 1, 128 N. W. 1041. The expounder is to "look to the whole and every part of the law, to the intent apparent from the whole, to the subject-matter, to the effects and consequences, to the reason and spirit, and thereby ascertain the ruling idea present" in the lawgiving body's mind at the time of the enactment, and then, so far as such idea can reasonably be spelled out of the enactment, give effect to it though it violates the letter. *Wisconsin Industrial School for Girls v. Clark County*, 103 Wis. 651, 659, 79 N. W. 422.

"True, 'the Constitution is a very human document' in the sense that it is a collection of words recognizing, characterizing and guaranteeing the natural rights of man—all that are essential to public welfare in the social state, but not so in the sense of creating such rights. The right to life, to liberty, to happiness, to equality one with another, are not of human creation. They are of divine origin, though by human instrumentality some one or more of them might be taken away. It is to prevent that, in the main, the Constitution was framed. So anything not expressly prohibited which reasonably conserves those God-given rights, is within its saving grace. Anything which clearly or materially impairs or destroys any one of them is condemned by it. It were better to inculcate the idea that it is not subject to change with the change of times and conditions, though such new conditions, by logical process may well be the deciding factor as to whether legislative means, resorted to for a particular end, are within or without the unchangeable constitutional principles. Manifestly it must have been the latter conception of the Constitution which so inspired statesmen of the first century of the republic with veneration for it. That might well have inspired Webster to love it, "to have a profound passion

for it," to "cherish it day and night," to "live on its healthful saving influence," and to "trust never, never to cease to heed it until" he should "go to the grave of his fathers," to "earnestly desire not to outlive it." It is good to draw inspiration from those lofty sentiments. I would not by word or deed, to any extent give rise to the thought that the ancient dignity of our system, in judicial conception here, has changed.

"At no period has appreciation of the great work of the fathers been more important than now. We need to sit anew, in thought, at their feet—revive knowledge that the result was wrought by a body or men—representatives of the great seats of learning of the English speaking race of two hemispheres, and otherwise men of broad experience, many of whom had been students of all federal governments of all prior ages in preparation for the special task—as the historian declared, "the goodliest fellowship of lawgivers whereof this world has record"—a body dominated by specialists inspired "by ennobling love for their fellow men" and the thought that they wrought, not for their age alone, but for the ages to come, and, so, sought to avoid the infirmities of previous systems of government by the people, by carefully providing that no change in letter or spirit should occur except in a particular and most deliberate and conservative way.

"Appreciating that the report of this case will be widely read and commented upon within and without the field of judicial administration, I particularly desire to avoid creation of, or administering to, false impressions respecting the dignity of the abolished defenses and the responsibility of courts for their existence.

"True, such defenses are of judicial origin, but not as that term, without explanation, might be understood by laymen. They are so in the same sense that a large part of the law, upon which rights and remedies depend, is of such creation. Nevertheless, all such is as much

the law of this state, to be respected by the courts, as any part of the Constitution or any act of the Legislature. It did not originate with the courts of our age or century. It has not been within the competency of this court at any time to change it. The defenses in question became a part of the law of the mother country through its judicial administration long before the Revolution. The law of such country, so far as adaptable to our conditions here, was adopted when our independent government was formed, and became the common law of this country. It was in full force in the territory of Wisconsin when our state was admitted into the Union. All officers were sworn to maintain it—that part relating to the law of negligence as well as the rest—and were bound to do so with as much fidelity as if incorporated into the written law. When the Constitution was adopted the unwritten law was substantially given the cast of written law and as such firmly entrenched as fundamental, subject to legislative change, by section 13, art. 14, of the Constitution in these words: "Such parts of the common law as are now in force in the territory of Wisconsin, not inconsistent with this Constitution, shall be and continue part of the law of this state until altered or suspended by the Legislature."

"Every judge of every court has been sworn to maintain the common law as thus intrenched in our system till changed by the Legislature. So from the viewpoint of the present, the law of negligence—including the defenses in question—does not lose in dignity when compared with an act of the Legislature, because ages ago it had judicial origin. It was, as we have seen, with deliberation adopted by the people when they organized our state government. No court in our time has had competency, we repeat, to change or create or destroy in that field. Power in that regard was expressly reserved to the Legislature. It has been free to act in the matter, within such reasonable limits as not to violate

guaranteed rights, for over 60 years, while the courts have been powerless to do more than to determine, to the best of their ability, the law as fundamentally adopted, or subsequently changed, by the lawmaking power, and apply it.

“Under the power reserved to the Legislature as aforesaid, it was competent for it to abolish the defenses in question, and to do it in such a way as to create inducement for employers to, voluntarily, become parties to the new system designed to better conserve human life and human happiness. Call the method “constitutional coercion,” if thought best. That casts no discredit upon the method, for where coercion is necessary coercion is legitimate, no guaranteed rights being infringed upon.

“It is needless to add that I heartily endorse all said in the court’s opinion regarding the importance of the legislation which has received approval. May it be the beginning of a well rounded out constitutional system making every one who consumes any product of labor for hire pay his proportionate amount of the cost of the creation representing the personal injury misfortunes of those whose hands have enabled him to secure the objects of human desire, thus minimizing the sufferings which are the natural incidents of industry and should be borne, so far as they represent pecuniary sacrifice, by the mass of mankind whose desires are administered to by such industry.”

**§ 229. Decisions of commission—Construction of word “employment.”**—The commission was called upon to construe the word “employment” in the case of *Wiken v. Superior Stevedores Company*.<sup>4</sup> The evidence showed that on Nov. 12, 1911, the applicant was employed by respondent as a dock laborer at a wage of 30 cents per hour. While engaged in unloading merchandise from

<sup>4</sup> 1 Bulletin Wis. Indus. Com. No. 3, p. 88.

a vessel, applicant met with an accident which resulted in the loss of the first two fingers of his right hand. Applicant claimed compensation for a permanent partial disability. Employer denied that there was any permanent disability. The evidence showed that there would be no permanent disability or loss of wage after the injuries had healed and that applicant was disabled for a period of 18 weeks.

AWARD: That the respondent pay for such medical and surgical treatment reasonably required at the time of the accident and thereafter for a period of 90 days and also pay the sum of \$7.50 per week for a period of 18 weeks, \$135.00 in all.

OPINION: At the time of the injury applicant was engaged in moving freight with a hand truck. It is contended that such was his employment within the meaning of the term "employment" as used in section 2394-11-1 (d) of chapter 50 of the laws of 1911. We consider that such construction of the term "employment" is too narrow. The applicant may more properly be said to have been engaged in the employment of dock man or dock laborer. In other words, the applicant was engaged in common labor in and about dock work.

**§ 230. Decisions of commission—Powers of commission—Review of awards—Construction of word "employment."**—The commission was called upon to define its powers to review awards in the case of *Winter v. Mellen Lumber Company*.<sup>5</sup>

On September 21, 1911, applicant was in the employ of the respondent as a shingle weaver. On this date he met with an accident which resulted in the loss of his thumb and first finger on his left hand. At the time of the accident the applicant was earning \$21 per week. Section 2394-10 of the compensation act pro-

<sup>5</sup> 1 Bulletin Wis. Indus. Com. No. 3, p. 89.

vides that the average annual earnings of an employé shall not be taken at more than \$750. The average weekly wage is 1-52 of the average annual wage; 1-52 of \$750 is \$14.42. The evidence shows that after the accident the applicant will be able to earn only \$9 per week. His earnings at the time of the accident were \$14.42 per week. His weekly loss of wage is \$5.42.

**AWARD:** That respondent pay the applicant compensation at the rate of 65 per cent. of \$5.42 per week for a period of fifteen years. This amounts to \$3.52 per week for fifteen years. The award also directs the respondent company to pay for such medical and surgical treatment, supplies and apparatus as were reasonably necessary at the time of the accident and thereafter for a period of ninety days to relieve and cure the applicant from the effects of the injury.

On motion to set aside the award the following memorandum was filed by the commission:

**MEMORANDUM:** The applicant was injured on Sept. 21, 1911, while employed as a shingle sawyer in respondent's mill in Ashland county, Wisconsin. While attempting to remove a spault—a small piece of shingle block—from the machine, his left hand was thrown against the saw, and he lost his thumb and forefinger.

The matter was referred to Hon. A. W. Sanborn, of Ashland, Wis., who was appointed examiner to take the evidence and report. Mr. Sanborn held a formal hearing, at which witnesses were sworn and testified, and a sworn statement of the applicant in writing was admitted in evidence on stipulation. After the taking of the testimony counsel for each party submitted to the examiner written argument in support of findings in behalf of his client. The examiner made findings of fact, and reported the evidence and findings to the commission and the committee thereupon on its own motion, assuming that the hearing was closed, reviewed the evidence and findings of the examiner reported, read

the written arguments of counsel, and entered its findings and made its award, which findings substantially followed the findings of the examiner.

The respondent makes application to have the award set aside, and for leave to make oral argument before the commission. The commission was under the impression that the parties finally submitted their case by their written arguments, or it would have been pleased to listen to oral argument before making its findings. Before the findings and award were actually made, a request on the part of the respondent for such hearing was made in a letter to the commission, but by some mistake the letter was not brought to the attention of the commission before the findings and award were entered, and copies thereof sent to the parties.

The consideration of this application involves two questions:

1. The power of the commission to set aside its award. This question will sooner or later have to be determined by the courts. The commission is not expressly given such power; whether it has implied power or not, is not here determined.

2. The exercise of discretion. On this point we can not see how the respondent can add anything to the written arguments before the examiner and the written arguments used on this motion to which we have given careful attention.

The claim is made that there is no evidence upon which to support the findings and award. We do not so understand the evidence. The injury is conceded; the applicant denies ability to run a shingle saw, and claims total disability. Respondent's evidence is all to the effect that the witnesses think that the applicant will in time recover his efficiency as a shingle sawyer; that the applicant suffers some incapacity must be admitted; the law requires the award to be based upon disability and loss of wage as applied to the employ-



ment in which applicant was performing service at the time of the injury. The commission is not inclined to give the term "employment" as used in the statute, a narrow or restricted construction. It does not appear that respondent has offered applicant employment as a shingle sawyer since his recovery. Nor can the commission see how the applicant will be able to return to such employment. The position of shingle sawyer is an expert position, requiring quick and accurate removal of the spault from the machine and the placing of the new shingle block in the machine about five times per minute. Removing the spault and replacing it with a shingle block must be done in the fraction of a second, if done efficiently. This work requires the use of both hands, and requires the grip of the hand. A fumble might mean another loss of a portion of the hand. The shingle sawyer works in a crew of four, and any inefficiency of his extends to the other members of the crew. If it were shown that there is some other expert position at a machine in a shingle mill where applicant's ability to earn wages is not impaired, we would be inclined to define his employment in terms to include such position; but the evidence does not disclose any such position.

With the policy of the law limiting our consideration to the employment in which the injured employé was performing service at the time of the accident, we have nothing to do. It may be said, however, that our experience so far fully demonstrates that this rule works both ways—to the advantage of the employer quite as often as to the advantage of the employé—and the average award is not large for such injuries. The award in this case figured at present worth amounts to \$2,217; this, it may be admitted, is a large award for this injury, but the case on the facts is exceptional.

The respondent complains that the commission practically adopted the findings of the examiner, and that

the examiner had no authority to make findings. We concede that the findings of the examiner had weight in our consideration of the evidence; it was our confidence in his ability and good judgment that caused us to appoint him as examiner. The commission feels that under the law it is not confined to the evidence taken on the hearing in the same degree as courts are in their proceedings. The law contemplates that the commission shall get all the facts and information available and render its award accordingly. The commission calls attention to the note of the legislative committee as justifying this conclusion. The construction given to the section by that committee must be held to have been adopted by the legislature. However, the commissioners examined the evidence and briefs fully, and brought to bear their independent judgment, and arrived at the same verdict as the examiner. Conceding that the examiner had no authority to make findings, still the commission feels that the parties in submitting the case to the examiner for his findings, is not now in a position to object to the power of the examiner to make such findings.

The motion to set aside the award and rehearing is denied.

§ 231. **Decisions of commission—Construction of "wilful misconduct"**—The case of *Neumann v. Milwaukee Electric Railway and Light Company*<sup>6</sup> construed an instance of "wilful misconduct".

On Feb. 9, 1912, Robert Neumann was in the service of the respondent as a street railway conductor. At about 1:05 a. m. on this date the car on which Robert Neumann was acting as conductor reached the end of the line, and when trolleys had been changed for the run back to car barn, Robert Neumann took the motor-man's place and ran the car several hundred feet until

<sup>6</sup> 1 Bulletin Wis. Indus. Com. No. 3, p. 92.

the car struck a curve, left the rails, threw Neumann under the wheels of the car and caused his death.

**FINDINGS:** Neumann had been instructed and knowingly and intentionally violated the rule. Neumann did not intend to run the car off the track and did not intend to injure himself. At the time of the accident Neumann was not performing service growing out of and incidental to his employment. His death was proximately caused by an accident due to wilful misconduct. Martha Neumann, widow of deceased, is not entitled to compensation.

**MEMORANDUM:** Robert Neumann, deceased, was a conductor on one of respondent's cars. On the night of Feb. 9, 1912, his car ran "out" to the end of his run and when the trolleys were changed for the run "in" he took the motorman's place and ran the car for some distance until it reached a curve in the track where the car jumped the track, threw Neumann under the wheels and he received injuries causing his immediate death. His widow makes claim for compensation.

Neumann had worked for the company as conductor some six months prior to this accident. The company instructs its conductors when they are first put to work, by placing a competent man on the car with them for some ten days, who shows the beginner how to perform his work. Likewise the motormen are instructed for a period of fifteen days. A conductor is not competent to run the motor until he receives the instructions given motormen. The conductors are instructed not to run the motor and this rule of the company is strictly enforced, and in all cases where there is a violation of the rule coming to the knowledge of the company the employé so violating is disciplined by being laid off without pay for a given time. The rule is well understood by all conductors. Neumann had been instructed in the rule. There is a rule of safety necessary for the protection of the company, its employés and the public.

It may be conceded that the conductor in cases of emergency might in the course of his duties be required to operate the motor. No such emergency is shown in this case. It appears that the deceased violated the rule knowingly and knowing that he was doing wrong in so doing. He did not intend to run the car off the car off the track, nor did he intend to injure himself. The commission is of the opinion that under these circumstances compensation can not be awarded. We hold that the deceased was in the employ of the company and that his death was proximately caused by accident, but at the time of the accident he was not performing service growing out of or incidental to his employment, and that his death came as the result of wilful misconduct on his part.

**§ 232. Decisions of commission—Construction of word "support"**—In *Pliska v. Hatton Lumber Company*<sup>7</sup> the commission construes the word "support". The evidence showed that on February 15, 1912, Peter Pliska, son of the applicant, was employed by respondent as a sawyer in the woods at \$30 per month and board. While engaged in this occupation he was killed by reason of a tree falling upon him. The deceased was about twenty years of age.

**AWARD:** That respondent pay the applicant the present worth of four times the sum of \$100 in weekly installments of \$10.58, figured at 3 per cent. interest compounded annually, to-wit, the sum of \$397.62, and the sum of \$5 for medicines.

**MEMORANDUM:** Applicant in this case is a farmer living near Stevens Point. He has a farm of 170 acres, with about 90 acres of it under cultivation. The farm is provided with the necessary machinery and live stock. The net value of the farm and other property over and above debts and liabilities, exceeds \$7,500. Applicant

<sup>7</sup> 1 Bulletin Wis. Indus. Com. No. 3, p. 95.

has seven children living, ranging in ages from 5 to 25 years. He claims compensation for the death of his son, who while in the employ of respondent was accidentally killed by a tree falling upon him. At the time of his death the deceased was 20 years of age, and had been receiving \$30 a month and board. It is in evidence that his board was worth \$16 a month. Deceased only worked for the respondent about three or four months in the winter, and the balance of the year he performed services for applicant, his father, on the farm. All the children, with the exception of one son, were making their homes with applicant and working on the farm and contributing their earnings to applicant for living expenses or for living expenses and accumulation. It appears from the evidence that \$550 is the fair average annual earning of deceased. It also appears from the evidence that there was a very substantial accumulation of property by the applicant in the year prior to the death of the deceased. Applicant was unable to make it clear to the commission what this amount of accumulation or increase was during that year, but freely admitted that it was quite substantial, and approximated four or five hundred dollars. Some of this was earned by one girl over 21 years of age.

The law provides that in case a deceased employé leaves no one wholly dependent upon him for support and one or more persons partially dependent therefor, the death benefit shall be such percentage of four times such average annual earnings of the employé as the average amount devoted by the deceased employé to the support of the person or persons so partially dependent upon him for support bears to such average annual earnings.

"Support" is defined to mean the necessary shelter, food, clothes, etc., to meet the daily necessities of the dependent, and it is to be determined by the amount

devoted to those purposes during the year preceding the death of the employé.

In this case the applicant and his wife have become more or less incapacitated through age and disease, so that it clearly appears that they were more or less dependent upon their children for support. In other words, without the aid of their children they would not have been able to have managed the farm and provide for their support in their customary manner of living. So we conclude that the deceased did contribute a portion of his earnings for the support of applicant. It is difficult to determine the amount contributed to the applicant for support, but it is our judgment that the percentage contributed to the applicant for support under the statute would equal \$100 for the year preceding his death.

The award will therefore go to the applicant for four times the sum of \$100 so contributed to applicant for his support. The commission is of the opinion that it is better for all parties concerned that the amount be paid in a gross sum, and therefore the award provides for payment in gross at the present worth of \$400 payable in weekly instalments of \$10.58, figuring the same at 3 per cent., which amounts to \$397.62.

It appears that respondent has paid all medical bills with the exception of \$5, which sum was paid by the applicant, and this amount is added to the award.

§ 233. Decisions of commission—Construction of "casual employment" and time of serving "notice"—In *Brown v. City of Mauston*<sup>8</sup> it appeared that on Sept. 26, 1911, the applicant was employed by the respondent to assist in unloading iron material to be used in construction of a bridge by the respondent. While engaged in assisting to unload this material from a wagon, an iron beam fell upon the ankle of the applicant and

<sup>8</sup> 1 Bulletin Wis. Indus. Com. No. 3, p. 97.

bruised the same. Applicant went home and did not call a doctor and did not serve notice of claim for compensation until Jan. 19, 1912, and then claimed a permanent disability. The evidence showed a total disability of only six weeks.

AWARD: That the city of Mauston pay to the applicant \$33.14 as compensation for the six weeks of disability, the same being 65 per cent. of the average weekly wage of the applicant.

OPINION: The city sets up the defense of casual employment; we think this defense is not available to a municipality, but only available to private employers. The city also defends on the ground that notice of claim was not served within thirty days after the accident. We are of the opinion that the applicant did not intend to mislead the city by reason of his failure to serve notice and that the city was not in fact thereby misled.

§ 234. Decisions of commission—Meaning of “support” “dependents”—In *Dougherty v. State of Wisconsin and State Board of Forestry*<sup>9</sup> it was shown that on Dec. 6, 1911, John W. Dougherty, employed as a forest ranger in the state forestry department, met with an accident causing his death. His salary was \$75 per month and board.

AWARD: That the State of Wisconsin pay the applicant the sum of \$960 as follows: \$62.50 on July 1, 1912, and \$62.50 on the first of each month thereafter until \$960 shall have been paid.

MEMORANDUM: The applicant is the mother of John W. Dougherty, deceased; she is a widow and has no other children. Deceased was employed in the state forestry department, and while so employed, on Dec. 6, 1911, died as the result of an accident received in the course of his employment. His wages at the time of his death were \$75 a month and board, making his

<sup>9</sup> 1 Bulletin Wis. Indus. Com. No. 3, p. 99.

annual earnings exceed the maximum provided in the compensation act.

Applicant resides at Minocqua, in this state. She has five cottages, which are rented mostly to people visiting the place as a summer resort. During the year preceding the death of her son she received in rental from the cottages the sum of \$415; her disbursements were \$473.80, of which amount \$174 or thereabouts was expended for permanent improvements on the cottages. Her net income from the cottages less permanent improvements was approximately \$115. She received during the year preceding the accident a government pension of \$12 a month. Besides the cottages, she owned a store building, the second floor of which was occupied as her dwelling; she conducted a store on the first floor for the sale of groceries and notions; her son had a two-thirds interest in this store.

Applicant claims that she made no profit from the store, and we have no evidence to show that she did make any profit; she claims that it cost her during the year for support approximately \$500. We think that this amount is reasonable considering her mode of life. Her son contributed to the joint business and to the support of his mother the whole of his salary less the amount that was necessary for his living expenses. It would appear therefore that the amount actually contributed for the mother's support by the son was the difference between her net income from the pension, \$144, and from rental, \$115, a total of \$259, and the sum of \$500 expended by her for support, being \$241.

Support is defined to mean the necessary shelter, food, clothes, etc., to meet the daily necessities of the dependent, and it is to be determined by the amount devoted to those purposes during the year preceding his death by the son. The law provides that in case the deceased employé leaves no one wholly dependent on him for support, but one or more persons partially de-



pendent therefor, the death benefit shall be such percentage of four times such average annual earnings of the employé as the average amount devoted by the deceased employé to the support of the person so partially dependent upon him for support bears to such average annual earnings.

The son's contribution, \$241, is 32 per cent. of \$750, the employé's average annual earnings figured at the maximum provided by law. Four times employé's average annual earnings equals \$3,000 and 32 per cent. of \$3,000 is \$960, which amount is awarded to Alvina Dougherty, mother of deceased, and the same will be payable in monthly instalments corresponding in amount to the monthly wage of deceased figured at the maximum provided by law, until the full amount is paid. One-twelfth of \$750 is \$62.50, the maximum monthly wage of deceased under the compensation act. The first payment may be made July 1, next, and subsequent payments monthly, on the first day of each month thereafter as follows: 15 months at \$62.50 and 1 month at \$22.50, making a total of \$960.

**§ 235. Procedure under the act—Rules of practice:**

Rule I. Employers coming under the provisions of Chapter 50, Laws of Wisconsin, 1911, shall post in conspicuous place where most likely to be seen and read by their employés all notices required to be posted by the Commission, and make report thereof to the Commission immediately thereafter. (Sec. 2394—29.) See form No. 6.

Rule II. Employers and employés coming under the provisions of Chapter 50, Laws of 1911, and physicians attending injured employés shall make report to the Industrial Commission of all accidents for which compensation may be claimed, on the 8th day after such accident, and a second report thereon on the 29th day after such accident, such reports to be made on forms

provided or prescribed by the Industrial Commission. (See forms (e) and (f).)

Rule III. In any case where an accident and injury to an employé occurs of which the Commission has jurisdiction under Chapter 50, Laws of Wisconsin, 1911, and compromise of liability thereunder is made directly by such employer or employé, the same shall be made in writing in the presence of one or more disinterested witnesses, who shall sign such compromise as such witnesses and copies of all such compromises shall be immediately mailed to the Commission, by the employer. All compromises may be reviewed, set aside, modified or confirmed by the Commission upon application of either party within one year of the date of compromise. (Sec. 2394—15.)

Rule IV. The Commission will hold public sessions in the offices of the Commission in Madison on the first and second Tuesday of each month and continuing from day to day until all matters before the Commission are heard. The Commission may from time to time hold public sessions in other places in the state as the convenience of the parties may require. The offices of the Commission at Madison shall be open for the transaction of business during office hours each working day. (Sec. 2394—14.)

Rule V. Examiners may be appointed by the Commission from time to time, whose duties shall be to aid the Commission in making settlements between employers and employés, and to make report of their actions and all facts in relation therewith to the Commission. (Sec. 2394—14.)

Rule VI. In case of disputes in matters coming under the jurisdiction of the Commission, either party to the dispute may apply to the Commission for relief and the Commission shall make such order or award as shall be lawful and just in the premises.

In all such cases the party complaining shall file his

application with the Commission, with copies to be served on the adverse party. The Commission shall thereupon serve such adverse party with a copy of such application and such adverse party shall file his answer thereto with the Commission within five days after such service and likewise serve a copy of such answer on the party making the application. The Commission will thereupon notify the parties of the time and place of hearing, at least ten days prior to such hearing. (Sec. 2394—16.)

Rule VII. The parties to the controversy shall be known as the applicant and the respondent. The party filing the application for relief shall be known as the applicant and the adverse party as the respondent. Either party may appear in person or by an attorney or agent.

Rule VIII. All service of papers, unless otherwise directed by the Commission or by law may be made by mail and proof of such mailing shall be prima facie proof of such service. Time within which service shall be made shall be the same as in courts of record unless otherwise specified by rule or order of the Commission.

Rule IX. Amendments may be made to any pleading, order, or award, upon application to the Commission and cause shown. The Commission may also amend any order or award on its own motion upon notice to the parties interested.

Rule X. The Commission may grant extensions of time in which to comply with any rule when it shall deem such extensions of time reasonable and it may likewise grant adjournments of hearings.

Rule XI. Parties to a controversy may stipulate the facts in writing, and the Commission may thereupon make its order or award based upon such stipulation.

Rule XII. Depositions may be taken and used upon any hearing where the convenience of the witnesses or parties may so require. Such depositions shall be taken in the same manner as in courts of record.

**§ 236. Circular letter to employers by the commission in explanation of its rules of practice.**—In inaugurating its plan of administration the commission sent to all employers a copy of its rules of practice and the forms adopted for use and directed that the employers indicate their acceptance or rejection of the law. It was likewise asked that the employers request a construction of provisions of the law not understood by them. Prompt report of all accidents resulting in personal injuries was demanded and attention was called to the penalties provided for a failure to make such reports.

**§ 237. Formal procedure under Wisconsin act.**—The Industrial Commission has prescribed certain forms for use in the administration of the act. The list includes forms for employers, employes and casualty companies and for use at hearing before the Commission, which are designated as follows:

- (a) Form of employer's written acceptance;
- (b) Form of employer's notice of withdrawal;
- (c) Form of notice that the employer has filed notice of election to become subject to provisions of act;
- (d) Form of notice by employer to the commission of compliance with law;
- (e) Form of first report of accident by employer;
- (f) Form of supplementary reports on accidents by employer;
- (g) Form of answer to application;
- (h) Form of notice by employe that he elects to be subject to provisions of act;
- (i) Form of notice of employe upon entering employment that he elects not to be subject to act;
- (j) Form of notice to employer of claim for injury under act;
- (k) Form of application for adjustment of claim;
- (l) Form of accident report of casualty company;
- (m) Form of notice of hearing;

- (n) Form of subpoena;
- (o) Form of admission of service;
- (p) Form of notice of entry of findings and award made by commission.

Copies of these forms are set out in the following sections:

### § 238. Form of employer's written acceptance: (a)

Industrial Accident Board,  
Madison, Wis.

Take notice that the undersigned employer of labor in Wisconsin accepts the provisions of Chapter 50, Laws of 1911, Wisconsin Statutes.<sup>10</sup>

Number of employes\_\_\_\_\_

Location of place of employment\_\_\_\_\_

Nature of employment\_\_\_\_\_

Dated at \_\_\_\_\_

this\_\_\_\_\_day of\_\_\_\_\_

19\_\_\_

By\_\_\_\_\_

\_\_\_\_\_  
P. O. Address.

### § 239. Form of employer's notice of withdrawal from operation of act: (b)

Industrial Accident Board,  
Madison, Wis.

Take notice that the undersigned employer of labor in Wisconsin hereby withdraws his (her) (its) election to become subject to the provisions of Chapter 50, Laws of Wisconsin, 1911.<sup>11</sup>

Dated at \_\_\_\_\_

this\_\_\_\_\_day of\_\_\_\_\_

19\_\_\_

By\_\_\_\_\_

\_\_\_\_\_  
P. O. Address.

---

<sup>10</sup> If employer wishes to accept the provisions of said chapter this notice must be signed by the employer and filed with the Industrial Accident Board. When so filed it becomes immediately binding on the employer. If employer is a corporation the notice should have the corporate name and seal affixed and be signed by an officer having authority so to do.

<sup>11</sup> This notice to be effective, must be filed in the office of the Board at least sixty days prior to the expiration of one year from the filing of the notice of acceptance, or sixty days prior to the expiration of any succeeding year.

**§ 240. Form of notice that employer has filed notice of election to become subject to provisions of act. (c)**

To all employés in Wisconsin of\_\_\_\_\_

-----  
You will take notice that your employer has this day filed with the Industrial Commission of Wisconsin notice of election to become subject to the provisions of Chap. 50, Laws of Wisconsin, 1911.

(This Law is commonly known as the Workmen's Compensation Act.)

You are further notified that you may serve notice on your employer of your election to come under the act and thereupon the act will immediately apply to you; or

You may within 30 days of this date serve notice on your employer that you elect not to come under the act in which case the act will not apply to you; or

You may not serve either of such notices, in which case you will come under the act at the expiration of 30 days from this date.

Blank forms of notices will be furnished free upon request to the Commission.

Dated at the office of the Commission, Madison, Wis., this\_\_\_\_\_ day of\_\_\_\_\_, 191\_\_

**§ 241. Form of notice by employer to the commission of compliance with the law. (d)**

To the Industrial Commission of Wisconsin:

The undersigned employer on the\_\_\_\_\_day of\_\_\_\_\_  
19\_\_\_\_, complied with the instructions and Rule 1 of your Commission by posting\_\_\_\_\_notices (Form (c)) of your Commission in conspicuous places where most likely to be seen and read by\_\_\_\_\_ employés.<sup>12</sup>

Dated at\_\_\_\_\_, Wis.,  
this\_\_\_\_\_day of\_\_\_\_\_,  
19\_\_\_

-----  
(Signature of Employer.)

By \_\_\_\_\_

**§ 242. Form of first report of accident. (e)**

File No. of Employer\_\_\_\_\_

(Do not fill in)

File No. of Accident\_\_\_\_\_

(Do not fill in)

---

<sup>12</sup> Employer will fill out and return this form to the Industrial Commission of Wisconsin, Madison, Wis.

**Employer.**

- (1) Name -----  
(Individual or firm name)
- (2) Address -----  
(St. No.) (City or town)
- (3) Subject to Chapter 50, Laws of 1911----- (4) Nature of  
(Yes or no)  
business or industry-----
- (5) Location of plant-----  
(City or town)

**Employé**

- (6) Name -----
- (7) Address -----  
(St. No.) (City or town)
- (8) Age----- (9) Sex----- (10) Married or single-----
- (11) Nationality----- (12) Understand English-----  
(Yes or no)
- (13) In what language instructed as to duties-----
- (14) Physical defect----- (15) Was injured per-  
(Eye or ear or both)  
son aware of danger----- (16) Did injured person make  
(Yes or no)  
proper use of guards or safety devices-----  
(Yes or no)
- (17) Was the injury due to wilful misconduct on the part of the  
employé----- (18) How long did injured work at or  
(Yes or no)  
with the thing which caused injury----- (19) What was the  
occupation of the person injured-----  
(Have in mind the nature of the work done)
- (20) Piece or Day Worker-----
- (21) Wages, per day-----per week-----

**Time, Place and Condition of Accident.**

- (22) Date of Accident-----M.  
(Month) (Day) (Hour)
- (23) Day of the week----- (24) Length of time injured had been  
at work on day of accident----- (25) Near window-----  
(Yes or no)
- (26) Near artificial light-----  
(Yes or no)
- (27) Condition of lighting-----  
(Good or poor)
- (28) Workmen congested-----  
(Yes or no)
- (29) Floor space over-crowded-----  
(Yes or no)

**Machine or Thing Causing Injury.**

(30) What was it.....

(31) In whose control at the time of the accident.....

(32) Part causing the accident.....

(33) Was it guarded at the time of the accident.....

Information furnished by.....

Position .....

Date of Receipt.....

(Do not fill in)

Date of Report.....19...

(Month) (Day)

(34) Describe the guard or safety device.....

(35) How did the accident occur.....

(36) What would you suggest to prevent similar accidents.....

**Care of Injured.**

(37) Kind of medical and surgical attention given since the accident occurred .....

**Nature and Extent of Injury.**

(38) Was accident fatal.....

(Yes or no) (State fully the nature and extent of injury)

(39) Probable period of disability.....

(Report in days)

(40) Attending physicians.

(Name)

(Address)

(41) Dependents.

(Name)

(Age)

(Relationship)

(Address)

**Additional Data.**

(42) Remarks .....



### § 243. Form of supplementary reports on accidents. (f)<sup>13</sup>

Employer's name\_\_\_\_\_

Date \_\_\_\_\_, 19\_\_

Employer's address\_\_\_\_\_

(Street and number) (City or town)

Name of injured employé\_\_\_\_\_

Address of injured employé\_\_\_\_\_

(Street and number) (City or town)

(1) Date of accident\_\_\_\_\_

(2) Has injured person returned to work\_\_\_\_\_

(Yes or no)

(3) On what date\_\_\_\_\_ (4) At what wages per day\_\_\_\_\_

(5) At what occupation\_\_\_\_\_ (6) Medical relief that has

been given injured person since your first report\_\_\_\_\_

(7) Payments made to compensate for injury\_\_\_\_\_

(Amount)

For period\_\_\_\_\_ to \_\_\_\_\_, inclusive.

(Date)

(Date)

Payments made to compensate for injury\_\_\_\_\_

(Amount)

For period\_\_\_\_\_ to \_\_\_\_\_, inclusive.

(Date)

(Date)

Payments made to compensate for injury\_\_\_\_\_

(Amount)

For period\_\_\_\_\_ to \_\_\_\_\_, inclusive.

(Date)

(Date)

(8) If settlement is completed please give the total payment \$\_\_\_\_\_

(Amount)

and the period to which this applies\_\_\_\_\_

(Date)

to\_\_\_\_\_ (9) Please file with the Commission

(Date, inclusive.)

copies of all agreements of settlement with employé.

(10) Remarks \_\_\_\_\_

(11) Information furnished by\_\_\_\_\_

Position \_\_\_\_\_

<sup>13</sup> This form has been substituted for form (f) (Second Report of Accident). All employers under the Workmen's Compensation Act are required, in all cases where disability continues for more than seven days:

First: To mail to the Industrial Commission of Wisconsin, Madison, Wis., on this form properly filled out, a Final Report when disability ceases.

Second: To mail to the said Commission on this form properly filled out, a report at the end of each Fourth week during disability.

§ 244. Form of answer to application. (g)<sup>14</sup>

----- Applicant,

vs.

----- Respondent.

The respondent above named for answer to the application here-  
in respectfully shows:

1. (State all facts in application that are admitted not to be in  
dispute.)

-----

2. (State pertinent facts in reply to application, that are in  
dispute.)

-----

3. State such additional facts as may constitute a defense or  
partial defense,

-----

4. Wherefor the respondent prays (stating relief asked),

-----

(Signed) -----

(Respondent.)

§ 245. Form of notice by employé that he elects to  
be subject to provisions of act. (h)

To -----

(Write name of employer plainly on above line.)

-----

(Write address of employer plainly on above line.)

Take notice that as your employé, I hereby elect to become sub-  
ject to the provisions of Chap. 50, Laws of Wisconsin, 1911.<sup>15</sup>

<sup>14</sup> The respondent shall answer the application within five days  
from the date that a copy of the application is served upon him.

The original answer shall be mailed to the Industrial Accident  
Board at Madison, Wis., and a copy thereof served upon the appli-  
cant by respondent either personally or by mailing to the address  
given in the application.

<sup>15</sup> If employer elects to become subject to Chap. 50, Laws 1911,  
employés then in service may immediately serve above notice upon  
employer and thereupon likewise become subject to Chap. 50, Laws  
1911.

Unless the employé gives notice to the contrary and without  
giving above notice, he will become subject to Chap. 50, Laws 1911,  
by remaining in such employ 30 days after the filing of such accep-  
tance by employer.

Dated at \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

(Employé) \_\_\_\_\_

(Address) \_\_\_\_\_

**§ 246. Form of notice of employé upon entering employment that he elects not to be subject to act. (i)**

To \_\_\_\_\_

(Write name of employer plainly on above line.)

\_\_\_\_\_  
(Write address of employer plainly on above line.)

You will take notice that being about to enter your employ, I elect not to be subject to the provisions of Chap. 50, Laws of Wisconsin, 1911.<sup>16</sup>

(Employé) \_\_\_\_\_

(Address) \_\_\_\_\_

Dated at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_

**§ 247. Form of notice to employer of claim for injury under act. (j)<sup>17</sup>**

To \_\_\_\_\_

(Write name of employer plainly on above line.)

\_\_\_\_\_  
(Write address of employer plainly on above line.)

You will take notice that according to the provisions of Chap. 50, Laws of Wisconsin, 1911\_\_\_\_\_

\_\_\_\_\_ hereby makes claim for compensation for injury received by \_\_\_\_\_ while in your employ.

Name of employé \_\_\_\_\_

Post Office Address \_\_\_\_\_

The accident occurred the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_  
at \_\_\_\_\_, Wisconsin.

<sup>16</sup> If employer has elected to become subject to provisions of the act, then upon entering the service the employé comes under the act likewise unless he gives the employer the above notice at the time he enters such service.

<sup>17</sup> This notice should be filled out by injured employé or some one in his behalf. In case of death of employé notice is to be filled out by dependent. Notice should be served within 30 days of accident on employer by delivering a copy of the above notice to employer personally or by registered mail.

Fill out in duplicate. Hand or mail one copy to employer, mail the other copy to the Industrial Accident Board, Madison, Wis.

The nature of the injury is as follows:

-----  
-----  
-----

Signature -----

Address -----

Dated at -----

this ----- day of -----

**§ 248. Form of application for adjustment of claim.  
(k)**

State of Wisconsin.

----- Applicant,

vs.

----- Respondent.

----- Respondent.

The petition of the above named applicant respectfully shows:

1. State address of applicant,

-----  
2. State occupation of applicant,

-----  
3. State address of respondent(s),

-----  
4. State general nature of claim in controversy, including time  
and place of accident,

-----  
5. State kind of relief demanded,

-----  
6. Wherefore the applicant prays that the said respondent be re-  
quired to answer the charges herein and that an order or award be  
made by the Industrial Accident Board granting such relief as the  
applicant may be entitled to in the premises.<sup>18</sup>

Dated at -----, this -----  
day of -----, 191--

(Signed) -----

(Applicant.)

---

<sup>18</sup> Either party to the dispute may apply to the Board for an adjustment of the matter in difference. The original application and one copy for each respondent shall be mailed to the Industrial Accident Board, Madison, Wis.

**§ 249. Form of accident report of casualty company. (1)**

-----  
(Give name of Insurance Company)

To

INDUSTRIAL COMMISSION OF WISCONSIN

(Successor to Industrial Accident Board)

MADISON, WISCONSIN,

Report only those accidents where the probable period of disability as reported by the employer is more than seven days.

1. Name of employer-----

2. Address of employer-----

(St. No.)

(City or Town)

3. Name of injured person-----

4. Address of injured person-----

(St. No.)

(City or Town)

5. At what place working-----

(St. No.)

(City or Town)

6. Date of accident-----191--

(Month) (Day)

7. Probable period of disability-----

8. What machine or thing caused the injury-----

9. Cause of accident-----

**§ 250. Form of notice of hearing. (m)<sup>19</sup>**

----- Applicant,

vs.

----- Respondent.

To the parties above named and to each of them.

Notice is hereby given that on the-----day of-----  
191--, at ten o'clock in the forenoon or as soon thereafter as the  
matter can be heard at-----

-----  
a hearing on the application in such matter will be had by the  
Board to determine and adjust the difference in dispute as set forth  
in the application on file.

The general nature of the claims is as follows:

-----  
Dated at Madison, Wis., this-----day of-----191--

INDUSTRIAL ACCIDENT BOARD,

By-----

Secretary.

<sup>19</sup> Parties may appear at any hearing personally or by agent or attorney.

§ 251. Form of subpoena: (n)

STATE OF WISCONSIN, )  
 )ss:  
 County of \_\_\_\_\_)  
 State of Wisconsin to \_\_\_\_\_

-----  
 You are hereby required to appear before the Industrial Accident Board of Wisconsin at the city of \_\_\_\_\_, county of \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon to give evidence in a certain proceeding pending before said Board wherein \_\_\_\_\_ is Applicant, and \_\_\_\_\_ is Respondent.

Hereof fail not at your peril.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_

A. D. 19\_\_

INDUSTRIAL ACCIDENT BOARD OF WISCONSIN,

By \_\_\_\_\_ Member of Board.

§ 252. Form of admission of service. (o)

Admission of service of \_\_\_\_\_  
 in re \_\_\_\_\_  
 Applicant, vs. \_\_\_\_\_  
 Respondent, is hereby admitted at \_\_\_\_\_  
 Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

§ 253. Form of notice of the entry of findings and award made by the commissioners. (p)

In the Matter of \_\_\_\_\_, Applicant,  
 vs.

\_\_\_\_\_, Respondent.  
 State of Wisconsin, )

)ss:  
 County of Dane. )

I, P. J. Watrous, Secretary of the Industrial Commission of Wisconsin, hereby certify that I have compared the attached copy of Findings and Award, with the original Findings and Award of the Industrial Commission of Wisconsin, made in the above entitled matter and filed in the office of said Industrial Commission of Wisconsin, in the Capitol in the City of Madison, Wisconsin, on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_, and that the same is a true copy thereof.

Dated at the City of Madison, Wis.,  
 this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

(Seal) \_\_\_\_\_ Secretary.  
 INDUSTRIAL COMMISSION OF WISCONSIN.

## CHAPTER XIII.

### NEW JERSEY COMPENSATION ACT.

Sec.	Sec.
254. Nature and scope of act.	dents to be made to the Department of Labor.
255. Text of New Jersey workmen's compensation act.	259. Construction of act and procedure thereunder.
256. Text of supplementary act saving existing contracts.	260. Form of accident blank for report by employer.
257. Text of act creating the employer's liability commission.	261. Form of report by insurance company to commissioner of Labor on accident and compensation paid.
258. Text of act requiring reports of industrial acci-	

**§ 254. Nature and scope of act.**—The New Jersey act is divided into two sections—compensations by action at law and elective compensation. The act permits an election by either of the parties and allows a termination of the agreement after election on sixty days notice in writing prior to any accident. Where the election is made the elective compensation is to be paid in case of injury or death without regard to the negligence of the employer unless the injury or death is intentionally self-inflicted or is due to the intoxication of the employé. Whether the injury or death is due to these latter causes is a question of fact for the jury and to be established by the employer. The common-law defenses of fellow servant, contributory negligence and assumption of risk are abolished. All employments except casual are covered by the act and the employer is held directly liable to pay the compensations as provided in the law. Compensation begins two weeks after the accident, but the expenses of medical and surgical aid not to exceed \$100 during the first two weeks after the injury is received. The act as it now stands works

automatically without the intervention of commissions and boards of award.<sup>1</sup>

**Note by Commissioner of Labor**—This act automatically places every contract of employment under the compensation section, but permits either party to elect not to be subject to its provisions, to have recourse to action at law for compensation.

**§ 255. Text of New Jersey workmen's compensation act.**—The act is entitled an act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder. It became effective July 4, 1911. It provides:

SECTION I. COMPENSATION BY ACTION AT LAW.

1. When personal injury is caused to an employé by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employé was himself not wilfully negligent at the time of receiving such injury, and the question of whether the employé was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual superintending powers of a court to set aside a verdict rendered contrary to the evidence.

2. The right to compensation as provided by section I of this act shall not be defeated upon the ground that the injury was caused in any degree by the negligence of a fellow employé; or that the injured employé assumed the risks inherent in or incidental to or arising out of his employment or arising from the failure of the

<sup>1</sup>The act has not been construed by the Supreme Court at the time this is written. It has been upheld in the court of Common Pleas of Essex county in a most instructive opinion by Justice Martin in the case of *Sexton v. Newark Dist. Tel. Co.* reported in 34 N. J. Law Journal, p. 368, and 35 N. J. Law Journal, p. 8.



employer to provide and maintain safe premises and suitable appliances; which said grounds of defense are hereby abolished.

3. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract, written or verbal, with a subcontractor to do all or any part of such work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer under this act for injury caused to an employé of such contractor or subcontractor by any defect in the condition of the ways, works, machinery or plant if the defect arose or had not been discovered and remedied through the negligence of the employer or some one entrusted by him with the duty of seeing that they were in proper condition. This paragraph shall apply only to actions arising under section one.

4. The provisions of paragraphs one, two and three shall apply to any claim for the death of an employé arising under an act entitled "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect or default," approved March third, eighteen hundred and forty-eight, and the amendments thereof and supplements thereto.

5. In all actions at law brought pursuant to section I of this act, the burden of proof to establish wilful negligence in the injured employé shall be upon the defendant.

6. No claim for legal services or disbursements pertaining to any demand made or suit brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, unless the same be approved in writing by the judge or justice presiding at the trial, or in case of settlement without trial, by the judge of the circuit court of the district in which

such issue arose; provided, that if notice in writing be given the defendant of such claim for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided.

## SECTION II. ELECTIVE COMPENSATION.

7. When employer and employé shall by agreement, either express or implied, as hereinafter provided, accept the provisions of section II of this act, compensation for personal injuries to or for the death of such employé by accident arising out of and in the course of his employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in paragraph eleven, in all cases except when the injury or death is intentionally self-inflicted, or when intoxication is the natural and proximate cause of injury, and the burden of proof of such fact shall be upon the employer.

8. Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in section II of this act, and an acceptance of all the provisions of section II of this act, and shall bind the employé himself and for compensation for his death shall bind his personal representatives, his widow and next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency.

9. Every contract of hiring made subsequent to the time provided for this act to take effect shall be presumed to have been made with reference to the provisions of section II of this act, and unless there be as a part of such contract an express statement in writing, prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of section II of this act are not in-

tended to apply, then it shall be presumed that the parties have accepted the provisions of section II of this act and have agreed to be bound thereby. In the employment of minors, section II shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor.

10. The contract for the operation of the provisions of section II of this act may be terminated by either party upon sixty days' notice in writing prior to any accident.

11. Following is the schedule of compensation:

(a) For injury producing temporary disability, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability, not, however, beyond three hundred weeks.

(b) For disability total in character and permanent in quality, fifty per centum of the wages received at the time of injury, subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of injury the employé receives wages of less than five dollars per week, then he shall receive the full amount of wages per week. This compensation shall be paid during the period of such disability, not, however, beyond four hundred weeks.

(c) For disability partial in character but permanent in quality, the compensation shall be based upon the extent of such disability. In cases included by the following schedule the compensation shall be that named in the schedule, to wit:

For the loss of a thumb, fifty per centum of daily wages during sixty weeks.

For the loss of a first finger, commonly called index

finger, fifty per centum of daily wages during thirty-five weeks.

For the loss of a second finger, fifty per centum of daily wages during thirty weeks.

For the loss of a third finger, fifty per centum of daily wages during twenty weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; providing, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per centum of daily wages during thirty weeks.

For the loss of one of the toes other than a great toe, fifty per centum of daily wages during ten weeks.

For the loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, fifty per centum of daily wages during one hundred and fifty weeks.

For the loss of an arm, fifty per centum of daily wages during two hundred weeks.

For the loss of a foot, fifty per centum of daily wages during one hundred and twenty-five weeks.

For the loss of a leg, fifty per centum of daily wages during one hundred and seventy-five weeks.

For the loss of an eye, fifty per centum of daily wages during one hundred weeks.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of clause (b).

In all other cases in this class the compensation shall bear such relation to the amounts stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. Should the employer and employé be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to the provisions of paragraph twenty hereof.

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as are stated in clause (a).

12. In case of death compensation shall be computed but not distributed on the following basis:

(1) Actual dependents.

If orphan or orphans, a minimum of twenty-five per centum of wages of deceased, with ten per centum additional for each orphan in excess of two, with a maximum of sixty per centum.

If widow alone, twenty-five per centum of wages.

If widow and one child, forty per centum of wages.

If widow and two children, forty-five per centum of wages.

If widow and three children, fifty per centum of wages.

If widow and four children, fifty-five per centum of wages.

If widow and five children or more, sixty per centum of wages.

If widow and father or mother, fifty per centum of wages.

If grandparents, grandchildren, or minor, or incapacitated

tated brothers or sisters, twenty-five per centum of wages.

Compensation in case of death shall be computed on the basis of the foregoing schedule, but shall be distributed according to the laws of this State providing for the distribution of the personal property of an intestate decedent, unless decedent has in fact left a will.

(2) No dependents.

Expenses of last sickness and burial not exceeding two hundred dollars.

In computing compensation to orphans or other children, only those under sixteen years of age shall be included, and only during the period in which they are under that age, at which time payment on account of such child shall cease.

The compensation in case of death shall be subject to a maximum compensation of ten dollars per week and a minimum of five dollars per week; provided, that if at the time of injury the employé receives wages of less than five dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during three hundred weeks.

Compensation under this schedule shall not apply to alien dependents not residents of the United States.

13. No compensation shall be allowed for the first two weeks after injury received, except as provided by paragraph fourteen, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in paragraph fifteen.

14. During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services and medicines, as and when needed, not to exceed one hundred dollars in value, unless the employé refuses to allow them to be furnished by the employer.

15. Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the employé, or some one on his behalf, or some of the dependents,

or some one on their behalf, shall give notice thereof to the employer within fourteen days of the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety days, and if the employé, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse, then compensation may be allowed, unless, and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Unless knowledge be obtained, or notice given, within ninety days after the occurrence of the injury, no compensation shall be allowed.

16. The notice referred to may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it through the mail to the employer at the last known residence or business place thereof within the State, and shall be substantially in the following form:

To (name of employer):

You are hereby notified that a personal injury was received by (name of employé injured), who was in your employ at (place) while engaged as (nature of employment), on or about the ( ) day of ( ), nineteen hundred and ( ), and that compensation will be claimed therefor.

Signed,

( ).

But no variation from this form shall be material if

the notice is sufficient to advise the employer that a certain employé, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. Notice served at the office of, or on the person who was the employé's immediate superior, shall be a compliance with this act.

17. After an injury, the employé, if so requested by his employer, must submit himself for examination at some reasonable time and place within the State, and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this State. If the employé requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employé to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect of the period of suspension.

18. In case of a dispute over, or failure to agree upon, a claim for compensation between employer and employé, or the dependents of the employé, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided to the judge of the court of common pleas of such county as would have jurisdiction in a civil case, or where there is more than one judge of said court, then to either or any of said judges of such court, which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding.

19. In case of death, where no executor or administrator is qualified, the said judge shall, by order, direct payment to be made to such person as would be appointed administrator of the estate of such decedent upon like terms as to bond for the proper application of



compensation payments as are required of administrators.

20. Procedure in case of dispute shall be as follows:

Either party may present a petition to said judge setting forth the names and residences of the parties and the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages received at the time of injury, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the said judge, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. This petition shall be verified by the oath or affirmation of the petitioner.

Upon the presentation of such petition the same shall be filed with the clerk of the court of common pleas, and the judge shall fix a time and place for the hearing thereof, not less than three weeks after the date of the filing of said petition. A copy of said petition shall be served as summons in a civil action and may be served within four days thereafter upon the adverse party. Within seven days after the service of such notice the adverse party shall file an answer to said petition, which shall admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for a petition.

At the time fixed for hearing or any adjournment thereof the said judge shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the clerk of the common pleas court, and judgment shall be entered thereon in the same manner as in causes tried in the court of common pleas, and shall contain a statement of facts as

determined by said judge. Subsequent proceedings thereon shall only be for the recovery of moneys thereby determined to be due, provided that nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court to review questions of law by certiorari. Costs may be awarded by said judge in his discretion, and when so awarded the same costs shall be allowed, taxed and collected as are allowed, taxed and collected for like services in the common pleas court.

21. The amounts payable periodically as compensation may be commuted to one or more lump sum payments by the judge of the court of common pleas having jurisdiction as set forth in the preceding paragraph, upon the application of either party in his discretion, provided the same be in the interest of justice. Unless so approved, no compensation payments shall be commuted.

An agreement or award of compensation may be modified at any time by a subsequent agreement, or at any time after one year from the time when the same became operative it may be reviewed upon the application of either party on the ground that the incapacity of the injured employé has subsequently increased or diminished. In such case the provisions of paragraph seventeen with reference to medical examination shall apply.

22. The right of compensation granted by this act shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law for a claim for unpaid wages for labor. Claims or payments due under this act shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution or attachment.

### SECTION III. GENERAL PROVISIONS.

23. For the purposes of this act, wilful negligence shall consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as evidences reckless indiffer-

ence to safety, or (3) intoxication, operating as the proximate cause of injury.

Wherever in this act the singular is used the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

Employer is declared to be synonymous with master and includes natural persons, partnerships and corporations; employé is synonymous with servant and includes all natural persons who perform service for another for financial consideration, exclusive of casual employments.

Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot.

24. In case for any reason any paragraph or any provision of this act shall be questioned in any court and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that sections I and II are hereby declared to be inseparable, and if either section be declared void or inoperative in an essential part, so that the whole of such section must fall, the other section shall fall with it and not stand alone. Section I of this act shall not apply in cases where section II becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension of the common law.

25. Every right of action for negligence, or to recover damages for injuries resulting in death, existing before this act shall take effect, is continued, and nothing in this act contained shall be construed as affecting any such right of action, nor shall the failure to give the notice provided for in section II, paragraph fifteen of this act, be a bar to the maintenance of a suit, upon any right of action existing before this act shall take effect.

26. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

**§ 256. Text of supplementary act saving existing contracts.**—The matter of existing contracts at the time of the enactment of the foregoing act was covered by the following supplementary act which became effective July 4, 1911. It reads:

1. Every contract of hiring, verbal, written or implied from circumstances, now in operation or made or implied prior to the time limited for the act to which this act is a supplement to take effect, shall, after this act takes effect, be presumed to continue subject to the provisions of section two of the act to which this act is a supplement, unless either party shall, prior to accident, in writing, notify the other party to such contract that the provisions of section two of the act to which this act is a supplement are not intended to apply.

**§ 257. Text of act creating the employer's liability commission.**—This act is entitled an act creating the employers' liability commission and prescribing its powers and duties, and requiring reports to be made by the employers of labor upon the operations of the employers' liability law for the information of said commission. This act became effective April 27, 1911. It provides:

1. The Governor is hereby authorized to appoint six citizens of this State as an employers' liability commission, who shall hold their offices for the term of two years and until their successors are appointed and qualified. They shall receive no compensation for their services, but their actual traveling expenses incurred upon the business of the commission shall be paid by the State Treasurer, upon warrants approved by the president of the said commission. The commission shall have power to choose one of their number as president and one of their number as secretary, and shall have power to appoint a clerk. The expenses of the commission, the salary of the secretary and of the clerk shall

be paid from appropriations made for that purpose in any annual or supplemental appropriation bill. It shall be the duty of the commission to observe in detail, so far as possible, the operations throughout the State of the recent act of the Legislature commonly known as "The Employers' Liability Act" entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employé in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

2. From and after the fourth day of July next, when the said law becomes operative, every employer of labor within the State of New Jersey shall report to said commission, upon the occurrence of any injury to any of his employés the name and nationality of the employé so injured, the nature and extent of such injury, whether said injured employé and the employer at the time of said injury were subject to the provisions of section one or section two of said act, and the amount of compensation when determined, together with such other facts relating to such injury as the commission may request. The information thus received shall be tabulated, from time to time, and the records thereof shall be the private records of the commission; they shall not be made public or open to inspection unless in the opinion of the commission the public interests shall require it, and they shall not be used as evidence against any employer in any suit or action at law brought by any employé for the recovery of damages. The commission shall hold meetings, from time to time, as they may deem necessary, and shall present to each session of the Legislature a report showing the operations under the said act during the preceding year, together with any suggestions or recommendations which they may deem necessary or proper for the improvement of the said

act, in order to accomplish with the greatest efficiency the purposes of the said act.

**§ 258. Text of act requiring reports of industrial accidents to be made to the Department of Labor.**—A statute makes it the duty of employers to report all industrial accidents. This act became effective March 26, 1912. It provides:

1. Upon the happening of any accident in any employment of labor in this state, the result of which shall be to prevent the injured person or persons from resuming work within two weeks after the happening thereof, the employer of such injured person or persons shall report, in writing, to the Commissioner of Labor the time, place and cause of the said accident, as nearly as the same may be fairly ascertained, the extent of injuries received, and such other facts as the Commissioner of Labor may, by rule or regulation, require. In case of injury not producing death, such report shall be filed within four weeks after the happening of such injury. In case of injury producing death, report shall be filed within two weeks thereafter. Such reports may be forwarded by mail, postage prepaid.

2. All companies engaged in casualty insurance business within the state of New Jersey shall furnish to the Commissioner of Labor a full and complete report of all accidents to the employés of any person, firm, or corporation insured by them, which prevents such injured person or persons from resuming work within two weeks after the happening of such injury, or which result in death. In case of injury not producing death, such report shall be filed within four weeks after such injuries have been reported to such insurance company, or such insurance company has otherwise gained knowledge thereof. In case of injury producing death, such report shall be filed within two weeks after such death has been reported to such insurance company, or such

insurance company has otherwise gained knowledge thereof. Such reports shall state the time, place and cause of injury, as nearly as the same may be ascertained, and the extent thereof, and such other and further information as the Commissioner of Labor may, by rule or regulation, require. Such notice may be sent by mail, postage prepaid.

3. The report filed with the Commissioner of Labor, in accordance with the provisions of this act, shall not be made public, and shall not be opened to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by any employé for the recovery of damages, but such reports shall always be at the service and use of the Employers' Liability Commission. Reports filed in accordance with this act shall be in lieu of all other reports required to be filed pursuant to the provisions of an act entitled "An act creating the Employers' Liability Commission and prescribing its powers and duties, and requiring reports to be made by the employers of labor upon the operations of the Employers Liability Law for the information of said commission," approved April twenty-seventh, one thousand nine hundred and eleven, and shall be considered to be compliance with the terms of the last mentioned act.

4. Any corporation, firm or person violating any of the provisions of this act shall for each offense be liable to a penalty of fifty dollars, to be recovered in an action of debt, brought by the Commissioner of Labor, in the name of the State of New Jersey. Each failure to report shall be regarded as a separate offense.

Approved March 26, 1912.

**§ 259. Construction of act and procedure thereunder.**—The New Jersey Workmen's Compensation Act

does not provide for the creation of a Board of Administration of the Act, but does provide for the creation of the "Employer's Liability Commission to observe in detail, so far as possible, the operation throughout the state of the Workmen's Compensation Act." The law requires that every employer of labor report to the said commission certain facts regarding every accident causing injury to any of his employes which entails a disability of two weeks, and that said commission report annually to the Legislature showing the operations under the said act during the preceding year, together with any suggestions or recommendations which they may deem necessary for the improvement of the said law.

Since March 26, 1912<sup>2</sup> the law requires all liability insurance companies to report to the Commissioner of Labor all accidents causing disability of two weeks, coming under their hands, both as to the extent of the injury and the amounts paid on account of such accidents.

Only two forms have been prescribed. One form is to be made out by employers and the other is to be filled out by all Liability Insurance companies and filed with the said commissioner. These two forms preceded by certain constructions of the compensation law and procedure under it are set out in the succeeding sections.

### § 260. Form of accident blank for report by employer:

#### To Employers of Labor of Any Kind:

The law requires that all accidents which prevent the injured person from returning to work within two weeks, or which result in death, shall be reported in writing to the Department, at Trenton, New Jersey, within four weeks, or after the death of such person injured, within two weeks.

Your attention is directed to the fact that the law provides a fine when such reports are not made in the manner specified.

For such purpose this blank is furnished. Use a blank for each

---

<sup>2</sup> See post § 261.



person injured, and, when more blanks are needed, notify the Department.

This blank is to be filled out in full according to the facts at the time of reporting. In case the accident herein reported results subsequently in death, that fact should then be immediately reported.

The purpose of these reports is statistical and preventive.

It is the desire of the Department to have the manufacturers of the State co-operate with it in the effort being made of preventing accidents, and the Department is particularly anxious to receive suggestions calculated to guard against a repetition of accidents coming under the observation of manufacturers, especially improvements in the guarding of machinery, etc.

LEWIS T. BRYANT, Commissioner of Labor.

One purpose of these reports is to secure as definite information of the operation of the Employers' Liability Act as can be obtained, and the law directs that they shall always be at the service and use of the Employers' Liability Commission to enable them to investigate the operations of said act, in order to present to each session of the Legislature a report showing the operations under said act, together with suggestions and recommendations for its improvement.

To that end the Employers' Liability Commission is most anxious to secure the kindly help of employers of all kinds of labor throughout the State, by comment, criticism or suggestion.

WILLIAM E. STUBBS, Secretary.

-----  
(Name of firm.)

-----  
(Business.)

-----  
(P. O. Address.)

Reports that the person named opposite was injured on the premises No. \_\_\_\_\_ Street, \_\_\_\_\_ (city or village) on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

A. If this is a second report, draw a line from A to B canceling questions covered.

Nature and extent of injury \_\_\_\_\_

-----  
Cause and manner of the accident. (a) State fully how the accident occurred (indefinite or incomplete reports will be returned for correction) \_\_\_\_\_

-----  
Has any accident ever occurred to any of the employes under similar circumstances at the same place or with the same apparatus?

-----  
Was part of machine causing the injury properly guarded at time of accident? \_\_\_\_\_

If so, how?-----

Was the person injured regularly employed on such machine or on the particular work at which injured?-----

If so, how long?-----

Can you suggest a practical method against a repetition of this accident? -----

B

Date of reporting-----

Report every accident which entails disability of two weeks, medical aid<sup>3</sup> or compensation.

To be forwarded to the Department of Labor, Trenton, N. J.

(Name of person injured.)

(Street residence.)

(City or village.)

(Occupation.)

Sex----- Age----- Married?-----

Nationality -----

Is this the first or second REPORT of this case? -----

Is there another report of this case to FOLLOW? -----

Did you GIVE written notice that the compensation provisions of section two of the Employers' Liability Act were not to apply to this employé? -----

Did you RECEIVE such notice from this employé? -----

Did the injury result in DEATH? -----

Is the disability permanent and TOTAL, as per clauses (b) and (c), paragraph II, of Liability Law? -----

Is the injury permanent and PARTIAL? -----

Did the injury REQUIRE medical aid? -----

Did you SUPPLY all the medical aid required during the first two weeks? -----

State the COST of medical aid rendered by you. -----

How much TIME did the employé lose due to the injury? -----

State the amount of weekly WAGES. -----

Has, or will, this employé, or dependents, receive COMPENSATION weekly? -----

<sup>3</sup> The term medical aid will probably be stricken out of next issue of blanks.

If so, how MUCH per week? -----  
 And for how MANY weeks? -----  
 In case of death, state number of DEPENDENTS. -----  
 In case of death, with no dependents, state cost of last  
 sickness and BURIAL. -----  
 State TOTAL, to which it will amount for all items, paid  
 and to be paid. -----  
 Was this case submitted to the Judge of the COURT of  
 Common Pleas for settlement or adjustment? -----  
 If so, specify the Court, -----  
 If no compensation was or is to be paid to the injured, state grounds  
 for not so doing -----  
 -----  
 -----

If case is not yet closed, make a second report giving the final figures, at termination of disability, or if death results later.

This Department should be notified of any subsequent modification of agreement of award or commutation thereof.

-----  
 (Signature of firm reporting.)

Printed in copying ink for convenience of persons desiring to retain copy.

§ 261. Form of report by insurance company to commissioner of labor on accident and compensation paid.

-----  
 (Name of insured employer.)

-----  
 (P. O. address.)

On second report omit replies to questions answered on first report.

Nature and extent of injury -----  
 -----  
 -----

Cause of accident -----  
 -----  
 -----

If no compensation was or is to be paid, state grounds for not so doing -----  
 -----  
 -----

If case is not yet closed, make a second report, giving the final figures, at the termination of disability, or if death results later.

This Department should be notified of any subsequent modification of agreement or award, or commutation thereof.

Date of reporting\_\_\_\_\_

To be forwarded to the Department of Labor, Trenton,  
NEW JERSEY.

\_\_\_\_\_  
(Name of person injured.)

On the\_\_\_\_\_day of\_\_\_\_\_19\_\_\_\_

Is this first or second REPORT of this case? \_\_\_\_\_

Is there another report of this case to FOLLOW? \_\_\_\_\_

Was injured subject to SECTION 1 or 2 of the Liability  
Law? \_\_\_\_\_

Did the injury REQUIRE medical aid? \_\_\_\_\_

Was medical aid SUPPLIED in accordance with law? \_\_\_\_\_

State approximate COST of medical aid. \_\_\_\_\_

Has, or will, this employé, or dependents, receive  
COMPENSATION weekly? \_\_\_\_\_

If so, how MUCH per week? \_\_\_\_\_

And for how MANY weeks? \_\_\_\_\_

In case of death, with no dependents, state cost of last  
sickness and BURIAL. \_\_\_\_\_

State TOTAL to which it will amount for all items, paid  
and to be paid. \_\_\_\_\_

\_\_\_\_\_  
(Signature of Insurance Co.)

## CHAPTER XIV.

### THE CALIFORNIA WORKMEN'S COMPENSATION ACT.

- | Sec.   | Sec.  |
|--|---|
| 262. The nature and scope of the act.  | 275. Form of notice to employer of claim for compensation for injury under act. (g) |
| 263. The California act and its construction by the board.                                     | 276. Forms for hearings before board.   |
| 264. Reports of industrial accidents.  | 277. Form of notice of filing of application for adjustment of claim. (h)           |
| 265. Rules of practice of the industrial accident board of California.                         | 278. Form of notice of hearing of application for adjustment of claim. (i)          |
| 266. The formal procedure under the act.   | 279. Form of subpoena for witness to appear before industrial accident board. (j)   |
| 267. Forms to be used by employers.  | 280. Forms to be used by physicians.  |
| 268. Form of employer's written acceptance of the provisions of the act. (a)                   | 281. Form of physician's report of accident to employé. (k)                         |
| 269. Form of employer's withdrawal of acceptance of provisions of the act. (b)                 | 282. Form of request for report of accident. (l)                                    |
| 270. Form of notice that employer has accepted the compensation provisions of the act. (c)     | 283. Form of request for fuller report of accident. (m)                             |
| 271. Form of employer's first report of accident to employé. (d)                               | 284. Form of notice to doctor to file report. (n)                                   |
| 272. Form of employer's supplemental report of accident to employé. (e)                        | 285. Forms to be used by casualty companies.  |
| 273. Forms for employés.   | 286. Form of first accident report of casualty company. (o)                         |
| 274. Form of notice by employé of election not to be subject to the provisions of the act. (f) | 287. Form of supplemental accident report of casualty company. (p)                  |

§ 262. The nature and scope of the act.—The California act is an adaptation of the Wisconsin statute with

slight modifications. Briefly stated, it abolishes the defenses of fellow servant and assumption of risk and establishes the doctrine of comparative negligence in actions for injuries to employés. The employer is denied the right to exemption from liability under contracts, rules or regulations. Where the employer elects to be bound by the statutory compensations and his employé does not notify the employer of his unwillingness to be bound thereby, then the compensation for injury or death is that fixed by the statute unless the injury is due to the personal gross negligence or wilful personal misconduct of the employer or his violation of a statutory duty. Where the injuries are due to these causes, the employé may, at his option, claim compensation under the act or, he may sue his employer and the employer may interpose only the single defense of comparative negligence. Compensation will be denied the employé where the injury is the result of his own wilful misconduct.

**§ 263. The California act and its construction by the board.**—The act is entitled, "An act relating to the liability of employers for injuries or death sustained by their employés, providing for compensation for the accidental injury of employés, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards." The act was approved April 8, 1911, and became effective September 1, 1911. It provides:

Section 1. In any action to recover damages for a personal injury sustained within this state by an employé while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent or servant of the employer, the fact that such employé may have been

guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison, but the damages may be diminished by the jury in proportion to the amount of negligence attributable to such employé, and it shall be conclusively presumed that such employé was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employés contributed to such employé's injury; and it shall not be a defense:

(1) That the employé either expressly or impliedly assumed the risk of the hazard complained of.

(2) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant.

**Note by board**—The foregoing section abolishes the common-law doctrine of assumption of risk and the fellow-servant rule, and modifies the defense of contributory negligence, thereby increasing the liability of the employer in excess of 300 per cent.

This portion of the act is not elective and applies to every employer. In an action at law, there is no limit placed upon the amount of damages that may be recovered for personal injuries sustained. If, however, an employer elects the compensation schedule fixed by the succeeding sections of the act, the amount that may be recovered by an injured employé is limited to the scale of compensation specified in section 8 of the act. In determining whether or not he will elect compensation, a prudent employer will take into consideration his increased liability, the present tendency of the courts and juries to allow heavy damages for personal injuries, and the fact that the ordinary indemnity insurance is limited to \$5,000 for a single injury and to \$10,000 where more than one person is hurt through a single accident. The New York Commission investigated two hundred and thirty-four fatal cases, and found that 2.1 per cent. of the recoveries allowed were in excess of \$5,000. Statistics show that when an accident causes permanent disability, a larger sum is awarded the injured than is paid where the accident results in death. This is exemplified by the recent decision of the Supreme Court of the State of California, affirming a judgment for \$70,000, which, together with accrued interest and costs, amounted to \$92,000. These instances plainly show that insurance under the old system of employers' liability is wholly inadequate, and that

only through compensation, with its limited risks, can the employer be fully protected.

Section 2. No contract, rule or regulation, shall exempt the employer from any of the provisions of the preceding section of this act.

**Note by board**—This section makes it impossible for an employer to avoid liability for damages by obtaining from his employé, as a condition precedent to employment, a waiver of liability which would impair the employé's rights under this act.

Section 3. Liability for the compensation herein-after provided for, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury accidentally sustained by his employés, and for his death if the injury shall approximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the accident, both the employer and employé are subject to the provisions of this act according to the succeeding sections hereof.

(2) Where, at the time of the accident, the employé is performing service growing out of and incidental to his employment and is acting within the line of his duty or course of his employment as such.

(3) Where the injury is approximately caused by accident, either with or without negligence, and is not so caused by the wilful misconduct of the employé.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death, except that when the injury was caused by the personal gross negligence or wilful personal misconduct of the employer, or by reason of his violation of any statute designed for the protection of employés from bodily injury, the employé may, at his option, either claim compensation under this act, or maintain an action



for damages therefor; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions of the preceding sections of this act.

**Note by board**—Compensation must be paid for any personal injury accidentally sustained by an employé, whenever these facts appear:

(1) Both employer and employé are subject to the compensation provisions of the act.

(2) Injury approximately caused by accident.

(3) Employé at the time of the accident was performing service, within scope of employment and growing out of and incidental to his employment.

(4) Such injury was not caused by wilful misconduct of injured employé.

An accident has been defined as "a bodily injury arising out of the sudden action of a violent, fortuitous and external cause."

It makes no difference who is to blame for the accidental injury; it is sufficient that the injury was received while the employé was performing the proper services of his employment. Only wilful misconduct, that is to say "intentional" misconduct, on the part of the injured employé can relieve the employer from liability for compensation.

When the conditions of compensation exist, the right to compensation becomes the exclusive remedy of the injured employé, unless

(1) The injury was caused by the "personal gross negligence" or "wilful personal misconduct" of employer; or,

(2) By reason of his violation of any statute designed for the protection of his employés from bodily injury.

In either of such cases the employé may elect compensation or proceed at law for damages.

The workman is denied the right to compensation where the accident results from his wilful misconduct, and likewise the employer is denied the benefit of compensation (at the option of the workman) if the accident results from the gross "personal" fault or misconduct of the employer.

In our act, the option is given to the employé only when the accident is caused by the "gross personal" fault of the employer. The negligence or misconduct of another can not be imputed to the employer.

Section 4. The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

(1) The state, and each county, city and county, city, town, village and school districts and all public corporations, every person, firm, and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employé for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, at the time of such accident, have withdrawn such election, in the manner provided in the next section.

**Note by board**—This section, when read in connection with sections 6 and 7, defines the two classes of employers to which the compensation schedule applies.

(1) The state, and each county, city and county, city, town, village and school district and all public corporations.

(2) All private employers who shall have elected to come within the compensation provisions of the act.

Except in so far as it may conflict with the constitutional provisions relative to charter cities, there can be little doubt as to the right of the legislature to provide for the compensation of those in the public service. Since compensation to injured workmen is based upon broad considerations of public welfare, as well as the resultant benefit to the individual, the state and its subdivisions should be the first to extend to employés the compensation which the state recommends to private employers.

Officials of the public bodies named should make proper provisions for the compensation fixed.

Section 5. Such election on the part of the employer shall be made by filing with the industrial accident board, hereinafter provided for, a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section three of this act, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to

the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he withdraws his election to be subject to the provisions of the act.

**Note by board**—By filing the statement with the Industrial Accident Board, the employer voluntarily accepts the compensation schedule of the act for the term of one year. Since compensation legislation is in a sense experimental in California, and its ultimate success dependent upon the co-operation of the employer, it was thought best to allow an employer to elect the compensation for a limited term, with the right to withdraw his election at the expiration of the term in the event he found compensation unsatisfactory.

Since this act was passed a constitutional amendment designed to meet any constitutional objections has been adopted by the people of this state, and it is probable that at some future time a compulsory act will be adopted.

Section 6. The term “employé” as used in section three of this act shall be construed to mean:

(1) Every person in the service of the state, or any county, city and county, city, town, village or school district therein, and all public corporations, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city and county, city, town, village or school district therein or any public corporation, who shall have been elected or appointed for a regular term of one or more years, or to complete the unexpired portion of any such regular term.

(2) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employés), but not including any person whose employment is but casual and not in the usual course of the trade, business, profession or occupation of his employer.

**Note by board**—This section defines the two classes of employés:

- (1) Public employés.
- (2) Private employés.

In the first class a distinction is made between an "employé" and an "official." Public officials are not included in the compensation benefits.

In the second class a distinction is made between the ordinary employé and the employé "whose employment is but casual, and not in the usual course of the trade, business, profession or occupation of his employer." Such employés are excluded from the compensation benefits.

Section 7. Any employé as defined in subsection (1) of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employé as defined in subsection (2) of the preceding section shall be deemed to have accepted and shall, within the meaning of section 3 of this act be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

(1) The employer charged with such liability is subject to the provisions of this act, whether the employé has actual notice thereof or not; and

(2) At the time of entering into his contract of hire, express or implied, with such employer, such employé shall not have given to his employer notice in writing that he elects not to be subject to the provisions of this act, or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of the act, such employé shall, without giving such notice, remain in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

**Note by board**—(1) "Public Employés." As to such persons, the act is compulsory. No recovery can be had against the state by an individual unless given the right by statute. Since the legislature can deprive an injured person of all right against the state to compensation, it can compel such person to accept the compensation it chooses to extend.

(2) "Private Employés." The same reasons which impelled the

legislature to make the act optional with employers apply with equal force to employés. After an acceptance has been filed by the employer, the workman may elect whether he desires to accept compensation or retain his common-law right to sue. If the employer has accepted the compensation schedule, then the employé comes under its provisions, unless (1) at the time of entering into the employment, the employé gives the written notice required by this section; or (2), if the contract of hire was made before the date of the employer's acceptance, the employé gives said notice within thirty days. In either case, the dependents of a deceased workman are bound by his election.

In England and some other jurisdictions, the workman is not compelled to make his election until after the happening of the accident, but our legislature felt that it was unfair to the employer to allow a workman to sue at law in ordinary instances, if he thought he could get more by so doing, and apply for compensation when no legal liability existed. Furthermore, if he could elect after the injury, it would create dissatisfaction and unnecessary economic waste—dissatisfaction in that when two men are similarly injured, one might sue at law and get either \$10,000 or nothing, and the other elect compensation and get \$1,000; waste in that in every instance the employer would have to procure all the evidence and prepare his defenses in anticipation of a suit, not knowing whether or not an action at law would be brought against him.

Section 8. Where liability for compensation under this act exists the same shall be as provided in the following schedule:

#### MEDICAL AND SURGICAL TREATMENT AND SUPPLIES.

(1) Such medical and surgical treatment, medicines, medical and surgical supplies, crutches and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employé in providing the same; provided, however, that the total liability under this subdivision shall not exceed the sum of \$100.00.

**Note by board**—This provision as to medical treatment is made for three reasons:

(1) As a rule, the employer is perhaps more competent to judge the efficiency of the doctor and to provide proper medical and surgical treatment than the injured man.

(2) It is to the interest of the employer to furnish the very best medical and surgical care to minimize the result of the injury, and to secure an early recovery.

(3) By so doing, he obtains a complete knowledge of the condition of the injured employé.

#### TIME OF COMPENSATION PAYMENTS.

(2) If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employé leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

#### PAYMENT IN TOTAL DISABILITY.

(a) If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability; provided, that if the disability is such as not only to render the injured employé entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance shall be increased to one hundred per cent of the average weekly earnings.

#### PAYMENT IN PARTIAL DISABILITY.

(b) If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said subsections (a) and (b) respectively.

**Note by board**—The object in providing for the payment in weekly installments is to furnish the compensation to the injured person at the same times that the family has been in the habit of receiving support and to insure the payment as needed. A deviation in this rule can be made in the case of death benefits, when the Industrial Accident Board is convinced that it is to the best interests of the parties to order that the amount be paid in a lump sum or otherwise.

The scale of compensation as here established divides the burden between the employer and the employé upon a basis of 65 and 35 per cent. of the loss accruing from the injury. Except that where disability is total and the injured employé is so helpless as to require the service of a nurse, it is increased during such period to 100 per cent.

It is urged that a compensation scheme should shift the entire burden upon the industry. This, however, is open to the following objections:

(1) To shift this entire burden to the employer before he has the opportunity to provide for it in the cost of production would not be fair to him;

(2) When the employé must bear a part of the burden there will not be a tendency to malingering.

One of the chief aims of compensation legislation is to provide something for every injury of more than a temporary character without unnecessarily burdening the industry. The maximum may seem insufficient in case of total disability or death, but, as to the employés as a whole, this is more than balanced by the certainty of some compensation for every serious injury.

(d) Said subsections (a), (b) and (c) shall be subject to the following limitations:

Aggregate disability indemnity for a single injury shall not exceed three times the average annual earnings of the employé.

If the period of disability does not last more than one week from the day the employé leaves work as the result of the accident no indemnity whatever shall be recoverable.

If the period of disability lasts more than one week from the day the employé leaves work as the result of the accident, no indemnity shall be recoverable for the first week of the period of such disability.

The aggregate disability period shall not, in any event extend beyond fifteen years from the date of the accident.

**Note by board**—(1) Aggregate liability for a single injury is limited to three times the average annual wage earnings. At law the recovery is unlimited, so that only by electing compensation can an employer know the maximum amount that he will be called upon to pay to compensate his employés for injuries sustained.

(2) No indemnity is allowed for the first week's disability. As medical and surgical treatment are furnished in all cases, it seems fair that in minor accidents not causing disability for more than a week and not inflicting serious hardship, no compensation should be allowed.

(3) The aggregate disability period is limited to fifteen years, even though the total amount paid during that time may not equal three times the annual wage earnings.

(3) The death of the injured employé shall not affect the obligation of the employer under subsections (1) and (2) of this section, so far as his liability shall have accrued and become payable at the time of the death, but the death shall be deemed the termination of disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability benefits, provided that such death was approximately caused by the accident causing such disability:

**Note by board**—The purpose of compensation legislation is to provide compensation for the injured employé and for his dependents when his death results from accident. The theory being that if death results from any other cause, the industry is under no obligation to care for his dependents. The fact that the employé was receiving compensation at the time of his death does not give his dependents any additional right.

Where the accident does not cause immediate death, but is the proximate cause thereof within a period of fifteen years thereafter, the death benefits provided in this section are to be paid in lieu of all other liabilities. The liability of the employer can not, in any event, be greater than three times the annual wage earnings, and in case of death from this amount is to be deducted any payment previously made to the injured person as compensation.

(a) In case the deceased employé leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient when added to the benefits which shall, at the time of death, have accrued and become payable under the provisions of subsection (2) of this section to make the total compensation for the injury and death (exclusive of the benefit provided for in subsection (1), equal to three times his annual average earnings, not less than \$1,000 nor more than



\$5,000, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding in amount to the weekly earnings of the employé.

**Note by board**—The maximum limit is the same as for compensation. Where the accident does not immediately result in death, but was the proximate cause of death, the limit is the same; that is, the total amount paid as weekly indemnity and the death benefit together shall not exceed three times the annual earnings. Death benefits may be ordered paid in weekly installments, such as the dependents were accustomed to receive or in such other manner as may, in the discretion of the board, seem most beneficial to the dependents.

#### PERSONS PARTIALLY DEPENDENT.

(b) In case the deceased employé leaves no one wholly dependent on him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employé as the annual amount devoted by the deceased to the support of the person or persons so partially dependent upon him for support bears to such average earnings, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding to the weekly earnings of the employé; provided, that the total compensation for the injury and death (exclusive of the benefit provided for in said subsection (1) shall not exceed three times such average annual earnings).

**Note by board**—When the deceased leaves no person wholly dependent, the death benefit is to be apportioned among those partially dependent in proportion to the aid or contribution made by the deceased to their support. In an action at law, the heirs would be entitled to full damages.

(c) In the event that the accident shall have approximately caused permanent disability, either total or partial, and the employé shall die within fifteen years after the date of the accident, liability for the death benefits provided for in said subsections (a) and (b) respectively

shall exist only where the accident was the approximate cause of death within said period of fifteen years.

(d) If the deceased employé leaves no person dependent upon him for support, and the accident approximately causes death, the death benefit shall consist of the reasonable expenses of his burial not exceeding \$100.

**Note by board**—If death does not result within fifteen years the employer is not liable for any death benefit.

Section 9. (1) The weekly earning referred to in section (8) shall be one fifty-second of the average annual earnings of the employé; average annual earnings shall not be taken at less than \$333.33, nor more than \$1,666.66, and between said limits shall be arrived at as follows:

(a) If the injured employé has worked in such employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned as such employé during the days when so employed.

(b) If the injured employé has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned during the days when so employed.

(c) In cases where the foregoing methods of arriving at the average annual earnings of the injured employé can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as having regard to the previous earnings of the injured employé,

and of other employés of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the average earning capacity of the injured employé at the time of the injury in the employment in which he was working at such time.

(d) The fact that an employé has suffered a previous disability, or received compensation therefor, shall not preclude him from compensation for a later injury, or for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, and shall be arrived at according to the previous provisions of this section.

(2) The weekly loss in wages referred to in section 8, shall consist of the difference between the average weekly earnings of the injured employé, computed according to the provisions of this section, and the weekly amount which the injured employé, in the exercise of reasonable diligence, will probably be able to earn, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

**Note by board**—The foregoing sections provide the manner in which the wage earning shall be ascertained and compensation computed. Under ordinary circumstances there will be no dispute as to the wage paid. The compensation is to be computed with regard to the employé's earning power at the time of the accident.

(3) The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employé:

(a) A wife upon a husband.

(b) A husband upon a wife upon whose earnings he is partially or wholly dependent at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employé, and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided equally among them and persons partially dependent, if any, shall receive no part thereof, and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

(4) Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the death of the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees.

**Note by board**—Certain persons above mentioned are conclusively presumed to be dependents. All other questions of dependency are to be determined as other questions of fact. In determining the question of dependency, the status is fixed as of the date of the death, not as of the date of the accident.

Section 10. No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and the address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person in-

jured or some one in his behalf, or in case of his death, by a dependent or some one in his behalf, shall be served upon the employer by delivering to and leaving with him a copy of such notice or by mailing to him by registered mail a copy thereof in a sealed and posted envelope addressed to him at his last known place of business or residence. Such mailing shall constitute complete service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days shall be equivalent to the notice herein required, and provided further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for collections of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby, and provided further that if no such notice is given and no payment of compensation made, within one year from the date of the accident, the right to compensation therefor shall be wholly barred. .

**Note by board**—Notice of the injury must be in writing, and it must contain name and address of the person injured, time and place of the accident, and nature of the injury. It must be signed by the injured person, a dependent or some one in his behalf, and must be served "personally" upon the employer or sent to his last known address by registered mail, **WITHIN THIRTY DAYS AFTER THE ACCIDENT.**

Section 11. Wherever in case of injury the right to compensation under this act would exist in favor of any employé, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial accident board, or any member or examiner thereof. The employé shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the

employé, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended, and if he shall refuse to submit to such examination after direction by the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to the weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

**Note by board**—The employé must permit physicians sent by the employer or by the Industrial Accident Board to examine him at any time after the accident. He may have his own physician there also, if he wishes. If he refuses to submit to such examination, his right to compensation shall be suspended or barred. The physician of the employer and of the employé may be required to testify as to the result of such examination.

**Section 12.** Any dispute or controversy concerning compensation under this act, including any in which the state may be a party, shall be submitted to a board consisting of three members, which shall be known as the industrial accident board. Within thirty days before this act shall take effect, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve three years, and another who shall serve four years. Thereafter such three members shall be appointed and confirmed for terms of four years each. Vacancies shall be filled in the same manner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In case of a vacancy, the remaining two members of the board shall exercise all

the powers and authority of the board until such vacancy is filled. Each member of the board shall receive an annual salary of three thousand six hundred dollars.

**Note by board**—It is expected that the employer and the employé will attempt to settle their differences without recourse to the board, since the amount of compensation to be paid is fixed by the act, that in a large majority of cases such settlements will be effected.

If this fails, then the board will hold a hearing, and from the evidence produced relative to the facts connected with the accident, injury or wages, determine upon such award as seems just. It is the purpose of the board to afford quick relief at a minimum of expense to the litigants, and, therefore, the hearing will be had at the place of the accident or such other place as may be convenient for the parties.

One of the chief advantages in creating the board to administer the act is that by so doing uniformity of ruling is assured, which would not be the case were the act administered by individuals in various localities.

**Section 13.** The board shall organize by choosing one of its members as chairman. Subject to the provisions of this act, it may adopt its own rules of procedure and may change the same from time to time in its discretion. The board, when it shall deem it necessary to expedite its business, may from time to time employ one or more expert examiners for such length of time as may be required. It may also appoint a secretary and such clerical help as it may deem necessary. It shall fix the compensation of all assistants so appointed.

**Note by board**—The Industrial Accident Board organized by electing A. J. Pillsbury chairman, and appointing Aaron L. Sapiro, of San Francisco, secretary.

Whenever required to expedite matters, the board will appoint an examiner, with power to make a preliminary investigation, and to take such testimony as may be obtained. The rules adopted by the board immediately follow the annotations to the act.

#### OFFICE OF THE BOARD AND TRAVELING EXPENSES.

**Section 14.** The board shall keep its office at the city of San Francisco, and shall be provided by the secretary of state with a suitable room or rooms, necessary

office furniture, stationery, and other supplies. The member of the board and its assistants, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board, before payment is made. All salaries and expenses authorized by this act shall be audited and paid out of the general funds of the state the same as other general state expenses are audited and paid.

**Note by board**—The office of the board is located in Room 907, Royal Insurance building, Pine and Sansome streets, San Francisco.

Section 15. Upon the filing with the board by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation under this act, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing to be given to each party interested by service of such notice on him personally or by mailing a copy thereof to him at his last known postoffice address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the board, and hearings shall be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney or any other agent, and to present such testimony as shall be pertinent to the controversy before the board, but the board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be had, or the time books and pay roll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time, direct any employé claiming compensation to be examined by a regular physician; the testimony so taken



and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof, or any examiner appointed thereby shall have power and authority to issue subpoenas to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be enforced by the superior court of any county, or city and county.

**Note by board**—This section relates to the procedure to be followed by the Industrial Accident Board, in determining controversies submitted to it.

The pleadings required will be simple, and only for the purpose of enabling each party and the board to understand the exact nature of the dispute in controversy.

**Section 16.** After final hearing by said board, it shall make and file (1) its findings upon all facts involved in the controversy, and (2) its award, which shall state its determination as to the rights of the party.

**Section 17.** Either party may present a certified copy of the award to the superior court for any county or city and county, whereupon said court shall, without notice, render a judgment in accordance therewith, which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with the like effect, be entered and docketed.

**Section 18.** The findings of fact made by the board acting within its powers, shall, in the absence of fraud, be conclusive, and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: within thirty days from the date of the award, any party aggrieved thereby may file with the board an application in writing for a review of such award, stating gen-

erally the grounds upon which such review is sought; within thirty days thereafter the board shall cause all documents and papers on file in the matter, and a transcript of all testimony which may have been taken therein, to be transmitted with their findings and award to the clerk of the superior court of that county or city and county wherein the accident occurred; such application for a review may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other, subject, however, to the provisions of law for a change of the place of trial or the calling of another judge. Upon such hearing the court may confirm or set aside such award, and any judgment which may theretofore have been rendered thereon, but the same shall be set aside only upon the following grounds:

(1) That the board acted without or in excess of its powers.

(2) That the award was procured by fraud.

(3) That the findings of fact by the board do not support the award.

**Note by board**—When an appeal is desired, it must be taken within thirty days from the date of the award. The review does not allow a trial by the Superior Court of the case presented to the Industrial Accident Board. The facts found by the board are conclusive, and the court in its review can only apply the law to the facts as found by the board, and can not set aside the award except upon the grounds stated in this section. The board will defend its findings and awards upon such review.

**Section 19.** Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board for further hearing or proceedings, or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and

transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties, or city and county.

**Section 20.** Any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the superior court; but all such appeals shall be placed on the calendar of the Supreme court and brought to a hearing in the same manner as criminal causes on such calendar.

**Note by board**—Any party may appeal from the judgment of the Superior Court sustaining or modifying the award, and such appeal goes directly to the Supreme Court of the state and is placed at the head of the calendar. This preference saves many months of delay and insures a speedy settlement of the controversy.

**Section 21.** No fees shall be charged by the clerk of any court for the performance of any official service required by this act, except for the docketing of judgments and for certified copies of transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court.

**Note by board**—It is expected that the compensation provisions of the act will be administered practically without cost to the litigants.

**Section 22.** No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

**Note by board**—If the claim were assignable, the employé might be tempted to sell it for an inadequate sum of ready cash, thus defeating one of the purposes of compensation legislation.

The claim for the compensation that has accrued at the time of death of the injured employé survives, and his estate may collect this amount just as it may collect other debts due at the time of his death. The right of survival is in addition to the death benefits allowed the dependents.

Section 23. A claim for compensation for the injury or death of any employé, or any award or judgment entered thereon, shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employé shall be so preferred; but this section shall not impair the lien of any judgment entered upon any award.

**Note by board**—Claims to, or awards for, compensation have a preference over other debts of an employer to the same extent that claims for wages have, but this preference can not impair the lien of any judgment entered upon a previous award of compensation for injury.

Section 24. Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employés, or otherwise, for the payment to such employés, their families, dependents, or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contributions, or other benefit whatsoever due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of any insurance company, which may, in whole or in part, have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery

against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employé, or to the person entitled to compensation shall be subject to the conditions of the insurance contract between them.

**Note by board**—The employer is primarily liable to the injured employé for the compensation provided by this act, regardless of any arrangement that the employer may make with a third person to carry this risk. The legislature, recognizing the necessity for an individual to guard against this risk, does not take away any right that he heretofore had to insure against this risk in mutual or other companies.

This section does not, however, authorize the formation of any insurance companies not already authorized by law.

Under this section, the employé is, in effect, made a party to the contract of insurance, and may enforce, in his own name, the liability of any insurance company which has insured against the compensation risk. Under the rules of the Industrial Accident Board, the employé may join the employer and insurance company in his application for relief.

The law recognizes the great benefits to employés of sick, accident, and death benefit societies, voluntarily put into operation by many large employers, and does not attempt to interfere with them.

The employé may, if he so desires, take out insurance at his own expense in his own name, and, in any such event, the benefit paid does not affect the right to compensation or diminish the amount thereof. To diminish the compensation in such instances would be just as unfair as it would be to increase the compensation when the employer is insured.

**Section 25.** Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law.

**Note by board**—Under this section any contract of insurance against compensation is made subject to all the provisions of this act, including the rights and liabilities of the insurance company created under the preceding section.

Before any company can enter into a contract of insurance against the compensation risk, it must first be approved by the Insurance Commissioner, as provided by law. The purpose of this provision is to guard against the formation of companies not strong enough financially to carry the risk.

Section 26. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment of any assignable cause of action in tort which the employé or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

**Note by board**—Where the injury is caused by the negligence or wrongdoing of a third person, the injured workman has his choice of one of two remedies.

(1) He may proceed at law and maintain an action in tort to recover damages from the person whose fault is responsible for the accident, or

(2) He may elect the compensation provided by this act. In the event the injured employé elects compensation, the employer, who must pay the compensation, succeeds to the rights of the injured employé and may maintain an action at law in his own name to recover damages from the person directly responsible for the injury.

Section 27. The board shall cause to be printed and furnished free of charge to any employer or employé such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his withdrawal of such election, and the date of the filing thereof; and a book in which shall be recorded all awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon

the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employés, by posting and keeping continuously posted in a public and conspicuous place such notice thereof in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective, and the board shall cause notice to be given in like manner of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and withdrawals of election, and of the time of the filing of the same, shall conclusively be imputed to all employés.

**Note by board**—The Industrial Accident Board will provide all notices and forms and will furnish any information as to the act upon request. By their rules, appended hereto, the board calls attention to the formal requirements under the law. In order to facilitate and promote the efficient administration of the act, it is essential that the forms adopted by the board should be used whenever applicable.

Notices must be posted as indicated, but knowledge of withdrawal and election is imputed to employés, even should the notices not be posted and kept posted as directed.

Section 28. Nothing in this act contained shall be construed as impairing the right of parties interested, after the injury or death of an employé, to compromise and settle upon such terms as they may agree upon, any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the dependents of any injured employé any interest which he may not divert by such settlement or for which he or his estate shall, in the event of such settlement by him, be accountable to such dependents or any of them.

**Note by board**—Compromises and settlements between parties in interest, the employer and the injured employé or dependents, are permitted after the injury or death of an employé.

Section 29. The sum of fifty thousand dollars is

hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, to be used by the industrial accident board in carrying out the purposes of this act, and the controller is hereby directed to draw his warrant on the general fund from time to time in favor of said industrial accident board for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

Section 30. All acts or parts of acts inconsistent with this act are hereby repealed.

**§ 264. Reports of industrial accidents.**

Section 1. Every employer of labor in this state shall keep a full, true and correct record of every personal injury suffered by his or its employés, arising out of or in the course of the employment, and resulting in death, or in disability extending over a period of a week or more. Within fifteen days after the happening of any such personal injury, a written report thereof shall be mailed by the employer to the industrial accident board informally or on blanks to be provided by said board for this purpose. The said report shall contain the name of the employer, location of place of employment, nature of employment, name, address, age, nationality, sex and occupation of the injured person, length of time the injured person had worked at the particular employment previous to injury, date and hour of the day or night of the accident, the hour at which the injured employé began work on the date of the accident, nature of the injury, cause of the injury and rate of wages of the injured employé.

Sec. 2. Upon the termination of the disability of the injured employé or at the expiration of sixty days from the date of the accident, if the disability should extend beyond such period, the employer shall mail to the industrial accident board a supplemental report in relation to such disability, informally or on blanks to be provided by said board for this purpose. Such report must con-



tain complete statements as to any claim made by the injured employé for indemnification for the injury sustained, payment made to him or in his behalf for medical, surgical or other care, claim for compensation or damages made for such injuries and any compromise or settlement of claim for compensation or damages entered into between the employer and such injured employé, his heirs, dependents or legal representative. In the event that any payment shall be made to such injured employé, or his dependents at any time thereafter, in compromise or settlement of a claim for compensation or damages, the amount of such payment shall be forthwith reported by the employer to the industrial accident board.

Sec. 3. Every physician who attends any such injured employé shall keep a record of his case. Within ten days from the date of his first attendance upon the injured employé, he shall mail to the industrial accident board a report, informally or on blanks to be provided by the said board for this purpose. The said report shall contain the name and address of the employer, name, address, sex and age of the injured employé, date of accident, description of the injury, probable nature and extent of disability. Upon the termination of the disability of the injured employé or the termination of said physician's attendance upon his case, he shall forthwith mail to the industrial accident board a supplemental report in relation to such case describing the physical condition of the injured employé, his disability, convalescence or discharge from the doctor's care.

Sec. 4. Every person, firm, association or corporation insuring against the liability of employers for damages or compensation for personal injury to employées or indemnifying any employer for, or on account of any such liability shall keep a record thereof, and shall within the first five days of each and every month, report in writing to the industrial accident board, informally or on

blanks to be provided by said board for this purpose, every such injury to employés reported to it, every claim for damages or compensation for such injury filed with such person, firm, association or corporation and any settlement or compromise of any such claim for damages or compensation whether made with such injured employé, his heirs, dependents or legal representative.

Sec. 5. Every employer, physician or insurance company, firm or association, shall furnish to the industrial accident board all further information required by it in order to constitute a substantially complete and accurate history of each injury and the damages or compensation paid therefor.

Sec. 6. The record required to be kept in pursuance of the provisions of this act shall at all times be open to inspection of the industrial accident board or any member thereof, or any examiner appointed thereby. Any statement contained in such report shall not be admissible as evidence in any action arising out of the death or injury of any employé by reason of the accident reported.

Sec. 7. It shall be unlawful for any person, firm, corporation, agent or officer of a firm or corporation to fail, neglect or refuse to comply with any of the provisions of this act. Any person, firm, corporation, agent or officer of a firm or corporation that violates or omits to comply with any of the provisions of this act, shall be guilty of a misdemeanor for each and every offense and shall be, upon conviction thereof, punishable by fine of not less than ten dollars or more than one hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment.

Sec. 8. Nothing in this act shall apply to employers of labor engaged in farming, dairying, agricultural or horticultural pursuits, in poultry raising or domestic service.

**§ 265. Rules of practice of the industrial accident board of California.**

The following rules shall go into immediate effect under the provisions of Chapter 399, Laws 1911, and shall govern in any matter or proceeding relating to the administration of said act by the industrial accident board:

**RULE I—PRELIMINARY.**

Chapter 399, Laws 1911, may be cited as the "Employers' Liability Act," and these rules as the "Industrial Accident Board Rules." All words and phrases used in these rules shall have the same meaning as is given to the same words and phrases in sections 3 to 31 of the "Employers' Liability Act."<sup>1</sup>

**RULE II—OFFICE OF INDUSTRIAL ACCIDENT BOARD.**

The office of the Industrial Accident Board is hereby established at Room 907, Royal Insurance Building, Pine and Sansome streets, San Francisco. Such office shall be open during such hours as are fixed by law for the transaction of public business. The board may from time to time hold public session in such other places in the state as convenience may require.

**RULE III—POSTING OF NOTICES.**

Employers shall immediately post, and keep posted, all notices required to be posted by the Industrial Accident Board, in conspicuous places in their offices and works where such notices are most likely to be seen and read by their employés.

**RULE IV—REPORTS.**

Employers and physicians attending injured employés shall, within ten days after the happening of an accident causing a loss of industrial time lasting more than one week, make a full report thereof to the Industrial Accident Board. In any case where a compromise of liability for accident is made directly by the employer

<sup>1</sup> See § 263.

and employés, a full report of such compromise shall be immediately made by the employer to the Industrial Accident Board.

#### RULE V—PARTIES TO PROCEEDINGS.

When a controversy arises concerning any matter over which the Industrial Accident Board has jurisdiction, any party to the controversy may apply to the board for relief. The party making such application shall be known as the "applicant." All other persons necessary to enable the board effectively and completely to adjudicate upon and settle all questions involved shall be made parties to the application and shall be known as the "defendants."

An application on behalf of the dependents of a deceased workman for the settlement of a controversy may be made by the legal personal representatives (if any) of the deceased workman on behalf of such dependents or by the dependents themselves. All such dependents shall be joined in the application either as applicants or defendants.

An application for the settlement of a controversy respecting medical attendance or the burial expense of a workman who leaves no dependents shall be made by the legal representatives (if any) of the deceased workman. If there are no such personal representatives, the application may be made by any creditor to whom any such expenses are due, and all other such creditors known to the applicant must be joined as respondents. If the amount awarded is not sufficient for the payment of such expenses in full, it shall be divided in proportion to the respective amounts found to be due.

#### RULE VI—JOINDER OF PARTIES.

All persons may be joined as applicants in whom any right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist.

All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative, and the board will of its own motion order that any additional party or parties be joined, when it deems their presence necessary.

#### RULE VII—PLEADINGS.

(1) Application. The applicant shall file a written application for relief with the Industrial Accident Board, containing the names of all parties, a general statement of the claim in controversy, the facts relating thereto and of the relief sought to be obtained. The board will thereupon fix a time and place for the hearing thereof, which shall not be more than forty (40) days after such filing and will serve a copy of such application, together with the notice of hearing, upon each adverse party. Either party shall have the right to be present at any hearing, in person or by attorney or any other agent, and present such testimony as shall be pertinent to the controversy.

(2) Answer. When any defendant desires to disclaim any interest in the subject-matter of the claim in controversy, or considers that the application is in any respect inaccurate or incomplete or desires to bring any fact, paper or document to the attention of the board as a defense to the claim or otherwise, he must, within ten days after the service of the application, file with or mail to the board his answer, setting forth the particulars in which the application is inaccurate or incomplete and the facts upon which he intends to rely. A copy thereof must likewise be served upon each party to the proceedings. Any material allegation contained in the application and not controverted in the answer will be deemed to be admitted.

#### RULE VIII—SERVICE OF PLEADINGS.

Any pleading or document may be served either by delivering to and leaving with the person to be served, a

copy thereof, or by mailing to such person, by United States registered mail a copy thereof in a sealed envelope, with the postage thereon fully prepaid, addressed to such person at his last known place of business or residence.

Where a pleading or document is served by mail, it shall, unless the contrary be proved, be deemed to have been served, at the time when the letter containing the same would have been delivered in the ordinary course of post. Proof of such mailing shall be *prima facie* proof of service.

#### **RULE IX—AWARDS.**

An award may be rendered in favor of or against any one or more of the applicants or defendants, according to their respective rights and liabilities. In every award the compensation to be paid to each person shall be set forth separately.

#### **RULE X—EXAMINER.**

Whenever convenience may require, the Industrial Accident Board will appoint an examiner, whose duty it shall be to aid the board in making settlements between employers and employés, conduct investigations, take testimony, and to make report of any and all matters relating to the claim in controversy to the board. The board may at any time, and with or without notice to either party, cause testimony to be taken, or any other investigation to be made.

#### **RULE XI—DEPOSITIONS.**

Depositions may be taken before any notary public or other officer authorized to administer oaths, and, when so taken, used upon any hearing where the convenience of the witnesses requires. Such depositions shall be taken upon notice in the same manner as in courts of record.

#### **RULE XII—STENOGRAPHIC REPORTER.**

Either party may, upon payment of the costs attendant thereon, require that the testimony produced

at any hearing be taken down and transcribed by a shorthand reporter.

#### RULE XIII—AMENDMENTS.

The board, or any member thereof, may at any time, with or without notice, upon good cause shown, permit any amendment to any pleading or open up any default.

The board may amend or modify or vacate any order or award upon motion of either party or upon its own motion. The moving party shall serve upon all other parties to the proceeding a notice of such motion five days prior to the time when the same is to be heard, unless otherwise ordered by the board or a member thereof.

#### RULE XIV. EXTENSION OF TIME.

The board, or any member thereof, may, either with or without notice, grant extensions of time within which to comply with any rule upon good cause shown, and may likewise grant adjournments of hearings.

#### RULE XV. STIPULATIONS.

Parties to a controversy may stipulate the facts in writing, and the board may thereupon make its order or award based upon such stipulation.

#### RULE XVI. EXCEPTIONS.

At any hearing had before the board, or before any examiner appointed by it, a note shall be made of any question of law raised or exception taken and of the facts in evidence in relation thereto.

#### RULE XVII. APPEALS.

Any party aggrieved may, within thirty (30) days from the date of the award, file with the Industrial Accident Board an application, in writing, for a review of such award, stating generally the grounds upon which a review is sought, the points upon which he relies, and the facts in evidence relating thereto. A copy of such application shall at the same time be served by the ap-

pellant upon all adverse parties. The adverse party or parties may, within ten (10) days thereafter, file with the board an answer to such application for review, stating generally his objections, his points, and the facts in evidence in relation thereto. The board will thereupon prepare and certify a transcript of the testimony taken and transmit the same, together with all documents and papers on file in the matter, to the superior court.

It is hereby ordered that the foregoing rules be, and the same are, adopted as the rules governing the Industrial Accident Board, and for the regulation of practice, and that the same go into effect forthwith.

**§ 266. The formal procedure under the act.—**The blank forms which thus far have been devised by the Industrial Accident Commission of California in connection with their administration of that act<sup>1a</sup> are distributed naturally into the following groups: Group I, blank forms required to be used by employers; group II, blank forms required to be used by employés; group III, blank forms required to be used at hearings before the board; group IV, blank forms required to be used by physicians; group V, blank forms required to be used by casualty companies.

#### GROUP I.

**§ 267. Forms to be used by employers.—**The blank forms required to be used by employers covered by the act are entitled and designated as follows: (a) Employer's written acceptance of the provisions of Employers' Liability Act; (b) Employer's withdrawal of acceptance of Employers' Liability Act; (c) Notice that employer has accepted the compensation provisions of the Employers' Liability Act; (d) Employers' first report of accident to employé; (e) Form of employer's supplemental report of accident to employé, and set forth in the order named in the sections that immediately follow:

<sup>1a</sup> See §§ 12 to 20.



### § 268. Form of employers' written acceptance of the provisions of the act. (a)<sup>2</sup>

To the Industrial Accident Board of the State of California:

Please take notice that the undersigned, an employer of labor in the State of California hereby accepts the provisions of an act of the Legislature of the State of California, entitled, "An act relating to the liability of employers for injuries or death sustained by their employés, providing for compensation for the accidental injury of employés, establishing an industrial accident board, making an appropriation therefor, defining its powers and providing for a review of its awards," approved April 8, 1911.

Number of employés.....

Location of place of employment.....

Nature of employment.....

Dated at....., Cal., this.....

day of....., 19--

Signed: ..... (Seal)

P. O. Address.....

City .....

The filing of the foregoing acceptance subjects the employer to the compensation provisions of said law for the term of one year from the date of filing and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of the term, file a written notice of the withdrawal of this acceptance in the office of the Industrial Accident Board (Employers' Liability Act, Section 5).

### § 269. Form of employer's withdrawal of acceptance of provisions of the act. (b)<sup>3</sup>

To the Industrial Accident Board of the State of California:

Please take notice that the undersigned, an employer of labor in the State of California, hereby withdraws.....election to be subject to the provisions of an act of the Legislature of the State of California, entitled, "An act relating to the liability of employers for injuries or death sustained by their employés, providing

<sup>2</sup> This notice must be signed and dated by employer and filed with the Industrial Accident Board. If employer is a corporation, this notice must be signed by its proper officers thereunto duly authorized and the corporate seal affixed.

<sup>3</sup> This notice, to be effective for the next succeeding year, must be filed in the office of the Industrial Accident Board at least sixty days prior to the expiration of the first year from the date of filing the notice of acceptance, or sixty days prior to the expiration of any succeeding year (Employers' Liability Law, section 5).

for compensation for the accidental injury of employes, establishing an industrial accident board, making an appropriation therefor, defining its power and providing for a review of its awards," approved April 8, 1911.

Dated at \_\_\_\_\_, Cal., this \_\_\_\_\_

day of \_\_\_\_\_, 191\_\_

Signed: \_\_\_\_\_ (Seal.)

P. O. Address \_\_\_\_\_

City \_\_\_\_\_

**§ 270. Form of notice that employer has accepted the compensation provisions of the act. (c)<sup>4</sup>**

To all the employes in the State of California of

-----  
You are hereby notified that your employer has this day filed with the Industrial Accident Board of the State of California, notice of acceptance of the provisions of Chapter 399, Laws of California, 1911 (commonly known as the "Employers' Liability Act").

You are further notified that you are subject to the compensation provisions of said act,

(1) Unless at the time of entering into your contract of hire, you serve notice in writing on your employer that you do not elect to be subject to such provisions, or

(2) If your contract of hire was made before the date hereof, unless within thirty days after the date hereof, you serve such written notice on your employer.

Dated at San Francisco, this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_.

INDUSTRIAL ACCIDENT BOARD OF CALIFORNIA.

A. J. PILLSBURY, Chairman,

WILL J. FRENCH,

WILLIS I. MORRISON.

**§ 271. Form of employer's first report of accident to employé. (d)<sup>4a</sup>**

Use this form for First Report only. A different form is provided for Supplemental Report.

Accidents which disable for less than seven calendar days need not be reported.

**1. Employer.**

a. Employer's name \_\_\_\_\_

<sup>4</sup> This notice shall be posted and continuously kept posted in a public and conspicuous place in the office, shop, or place of business of the above named employer. (Employers' Liability Act, Section 27.)

<sup>4a</sup> This report must be made within fifteen days after the happening of the accident. Answer all questions fully. Information given herein is confidential. Failure to report is a misdemeanor.

- b. Main office: Street and No.----- City or town-----  
c. Business -----  
d. Location of plant, if not at main office address-----

## 2. Injured Employé.

- a. Employé's name (in full)-----  
b. P. O. address-----  
c. Sex----- d. Color----- e. Age-----  
f. Married, widower or single-----  
g. Where born----- h. Speak English?-----  
i. If not, what language?-----  
j. Occupation when injured (machinist, carpenter, laborer, etc.)-----  
-----  
k. In what department or branch of work?-----  
l. Was this regular occupation?-----  
m. If not, state regular occupation-----  
n. Length of experience in occupation when injured, here-----  
-----; elsewhere-----  
o. Piece or time worker?----- p. Wage (or average earnings)  
per day----- q. Working days per week-----

## 3. Accident.

- a. Date----- b. Hour of day----- c. Place-----  
d. At what hour did injured employé begin work on that day?-----  
-----  
e. Name of machine, tool or appliance in connection with which  
accident happened-----  
f. By what kind of power driven?-----  
g. Hand or mechanical feed-----  
h. Part on which accident happened-----  
-----  
i. How guarded?-----  
j. Describe in full how accident happened-----  
-----  
-----  
k. What would you suggest to prevent similar accidents?-----  
-----

## 4. Injury.

- a. Did injury result in death?-----  
b. If so, give date of death-----  
c. Name and P. O. address of relative or friend of deceased-----  
-----  
d. State exactly what part of person injured and extent of injury-----  
-----  
-----  
e. How much longer will injured person be unable to do his regu-  
lar work? -----

**5. Medical Care.**

- a. Name and address of present attending physician or hospital (if more than one, give each)\_\_\_\_\_
- b. Furnished by employer or employé?\_\_\_\_\_
- c. Physician or hospital for first aid, if other than the foregoing\_\_\_\_\_  
\_\_\_\_\_

**6. Insurance.**

- a. Did you carry insurance against liability for this accident?\_\_\_\_\_
- b. If so, name of company\_\_\_\_\_
- c. What kind of policy—employer's liability, collective, compensation, or other?\_\_\_\_\_

**7. Remarks.**

Date of Report\_\_\_\_\_

Made out by\_\_\_\_\_

(If not member of firm, state position)\_\_\_\_\_

**§ 272. Form of employer's supplemental report of accident to employé. (e)<sup>4b</sup>**

Do not use this form for first report of accident. Another form is provided for that purpose.

Date of report\_\_\_\_\_ Furnished by\_\_\_\_\_ Position\_\_\_\_\_

Employer \_\_\_\_\_

(Name)

(Address)

Employé \_\_\_\_\_

(Name)

(Address)

Accident \_\_\_\_\_

(Date)

(Place)

**DISABILITY.**

(1) If injured employé has died, date and place of death\_\_\_\_\_

(2) Nearest surviving relative\_\_\_\_\_

(Name) (Address)

(3) When did injured employé return to work\_\_\_\_\_

(4) If not returned, but recovered, when did disability end\_\_\_\_\_

(5) If still disabled, how much longer is disability expected to last\_\_\_\_\_  
\_\_\_\_\_

<sup>4b</sup> Employers must fill in and mail this report to the Board, (1) in all cases upon termination of disability of injured employé; (2) if disability extends over more than sixty days from date of accident, then on the sixtieth day from date of accident, and again on termination of disability. The information contained in this report is confidential. Failure to report is a misdemeanor.

Payment in full settlement of claim, made at any time after filing of this report, must be forthwith reported to the Board.

(6) Present condition -----

(7) Physician now in attendance -----

(Name) (Address)

(8) Has injury resulted in—

(a) Permanent total disability (inability to do any work) -----

(Specify condition.)

(b) Permanent partial disability (ability to do some work but not same as before accident) -----

(Specify condition.)

(c) What work can disabled employé do, and at what wage--

(9) Additional remarks -----

#### RELIEF AND INDEMNITY.

(10) What payments have been made to injured employé, or on his behalf, since date of accident, on account of—

(a) Wages (exclusive of amount due at time of accident) -----

(Period)

(Total amount)

(b) Medical expenses and other care -----

(Specify)

(c) Additional indemnity -----

(Specify)

(11) To whom paid -----

(Name)

(Address)

(12) Are payments scheduled above in full settlement of claim by injured employé -----

(13) If not, state amount and composition of claim -----

(Specify fully)

#### INSURANCE.

(14) Did you carry liability insurance at time of accident -----

(a) ----- (b) -----

(Name of company)

(Kind of policy)

(15) What portion of above amount, if any, has been paid by insurance company? -----

(16) State fully what steps have been taken to settle claim -----

(17) Attach herewith copies of all agreements of settlement -----

(18) Additional remarks -----

GROUP II.

**§ 273. Forms for employés.**—The forms required to be used by the employés covered by the act are entitled and designated as follows: (f), Blank form of notice by employé of election not to be subject to the provisions of the Employers' Liability Act, (g), Blank form of notice to employer of claim for compensation for injury under Employers' Liability Law, and are set forth in the order named in the two succeeding sections.

**§ 274. Form of notice by employé of election not to be subject to the provisions of the act. (f)<sup>5</sup>**

To -----  
(Write name of employer on above line.)

-----  
(Write address of employer on above line.)

You will please take notice that the undersigned, now in, or being about to enter, your employ hereby elects not to be subject to the provisions of Chapter 399, Laws of California, 1911.

Dated at -----, Cal., this ----- day of -----, 191---

Signed -----

P. O. address -----

City -----

**§ 275. Form of notice to employer of claim for compensation for injury under act. (g)<sup>6</sup>**

To ----- (Write name of employer on this line.)

----- (Write address of employer on this line.)

You will take notice that the undersigned hereby makes claim

<sup>5</sup> If employer has elected to become subject to the compensation provisions of the act above referred to, then the employé comes under said provisions (1) unless at the time of entering into the employment, the employé gives the above notice, or (2) if the contract of hire was made before the date of the employer's election, unless within thirty (30) days after such election, the employé gives said notice (Employers' Liability Act, Section 7, Sub. 2).

<sup>6</sup> The foregoing notice must be filled out by the injured employé or some one in his behalf, or in case of his death, by a dependent or dependents or some one in their behalf, and served upon the employer by delivering a copy of the above notice to the employer personally, or by registered mail within THIRTY (30) DAYS after the occurrence of the accident for which compensation is claimed (Employers' Liability Act, Section 10).

for the compensation provided in Chapter 399, Laws of California, 1911, for injury received by----- while in your employ.

Name of employé-----

Post office address-----

Relationship to claimant----- (State whether notice given by injured person, agent or dependent.)

The accident occurred on the----- day of-----, 191\_\_\_\_, at-----, California.

The nature of the injury is as follows-----

Dated at-----, Cal., this----- day of-----, 191\_\_\_\_.

Signature-----

P. O. address-----

City-----

Fill out in duplicate. Deliver personally or send one copy by registered mail to employer and mail other copy to the Industrial Accident Board of the State of California, Royal Insurance Building, San Francisco.

### GROUP III.

**§ 276. Forms for hearings before board.**—The blank forms required to be used at hearings before the board are entitled and designated as follows: (h) Notice of filing of application for adjustment of claim by Industrial Accident Board; (i), Form of notice of hearing of application for adjustment of claim before the Industrial Accident Board; (j), Form of subpoena for witness to appear before the Industrial Accident Board, and are set forth in the order named in the three succeeding sections:

**§ 277. Form of notice of filing of application for adjustment of claim. (h)**

-----  
-----  
Applicant\_\_\_\_,

vs.

-----  
-----  
Defendant\_\_\_\_.

To the above-named defendant\_\_\_\_\_

You are hereby notified that the application of\_\_\_\_\_

entitled as above to adjust a claim for compensation arising out of  
 { injuries sustained by -- }  
 { the death of ----- }

(a copy of which is attached hereto) has been filed in the office of  
 the Industrial Accident Board of the State of California, 907 Royal  
 Insurance Building, 201 Sansome Street, San Francisco, California.

In the event that you desire to make any answer to the said  
 application your attention is called to the following rules adopted  
 by this Board, relative to the same, to-wit:

“RULE VII—ANSWER. When any defendant desires to disclaim  
 any interest in the subject-matter of the claim in controversy, or  
 considers that the application is in any respect inaccurate or incom-  
 plete or desires to bring any fact, paper or document to the atten-  
 tion of the Board as a defense to the claim or otherwise, he must,  
 within ten days after the service of the application, file with or mail  
 to the Board his answer, setting forth the particulars in which the  
 application is inaccurate or incomplete and the facts upon which he  
 intends to rely. A copy thereof must likewise be served upon each  
 party to the proceedings. Any material allegation contained in the  
 application and not controverted in the answer will be deemed to be  
 admitted.”

“RULE VIII—SERVICE. Where a pleading or document is  
 served by mail, it shall, unless the contrary be proved, be deemed to  
 have been served, at the time when the letter containing the same  
 would have been delivered in the ordinary course of post. Proof of  
 such mailing shall be prima facie proof of service.”

And you are further hereby notified that unless you appear and  
 answer within ten days after the service on you of this notice, said  
 Applicant will apply to the Board for the relief prayed for.

Witness:

INDUSTRIAL ACCIDENT BOARD

Of the State of California,

this\_\_\_\_\_day of\_\_\_\_\_, 191\_\_

Member—Secretary.

STATE OF CALIFORNIA, }  
 City and County of\_\_\_\_\_ } ss:

\_\_\_\_\_, being duly sworn, deposes and  
 says: That he is, and was at the times of the service of the papers  
 herein referred to, a citizen of the United States, over the age of  
 eighteen years, and not a party to the within-entitled proceeding;  
 that he personally served the within notice on the hereinafter-  
 named defendants, by delivering to and leaving with each of said



defendants personally, in the City and County of \_\_\_\_\_,  
State of California, at the times set opposite their respective names  
a copy of said notice attached to a copy of the complaint referred to  
in said notice.

Names of Defendants Served:

Date of Service:

Subscribed and sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, A. D. 191\_\_

INDUSTRIAL ACCIDENT BOARD  
Of the State of California.

INDUSTRIAL ACCIDENT BOARD } ss:  
Of the State of California,

I hereby certify that I served the foregoing notice on the \_\_\_\_\_  
day of \_\_\_\_\_, A. D. 191\_\_, on the defendant\_\_ hereinafter  
named, by depositing a copy of said notice attached to a copy of the  
application therein mentioned, in the United States mail at \_\_\_\_\_

California, with the postage thereon fully prepaid, and addressed to  
the said defendants, as follows, to-wit:

Name \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Name \_\_\_\_\_ Address \_\_\_\_\_

Dated \_\_\_\_\_, A. D., 191\_\_

INDUSTRIAL ACCIDENT BOARD  
Of the State of California.

§ 278. Form of notice of hearing of application for  
adjustment of claim (i).<sup>7</sup>

Industrial Accident Board of the State of California.

Applicant\_\_,

vs.

Defendant\_\_.

Claim No. \_\_\_\_\_.

Notice of Hearing of Application for Adjustment of Claim.

<sup>7</sup> Either party shall have the right to be present at any hearing,  
in person or by attorney or other agent, and to present such testi-  
mony as may be pertinent. (Employers' Liability Act, Section 15,  
Chapter 399, Laws 1911.)

Application on file in the office of the Industrial Accident Board of the State of California, 907 Royal Insurance Building, 201 Sansome street, San Francisco.

The People of the State of California Send Greeting to:

-----, Defendant---

You are hereby notified that the application of-----entitled as above, to adjust a claim for compensation arising out of (injuries sustained by the death of)-----has been set for hearing and will be heard at-----on the -----day of-----, 191--, at-----o'clock-----M., and you are hereby further notified that in default of your attendance at the time and place above mentioned, the Industrial Accident Board of the State of California will proceed to hear and dispose of the said application in the manner provided by law.

Dated at San Francisco, California, this-----day of-----, 191--.

Witness: Industrial Accident Board of the State of California.

By-----, Member—Secretary.

Industrial Accident Board of the State of California, ss:

I hereby certify that I served the foregoing notice on the defendant--, hereinafter named, at the times set opposite their respective names, by depositing a copy of said notice in the United States mail on said day at-----, California, with the postage thereon fully prepaid, and addressed to the said defendant--, as follows, to-wit:

Date of Service.

Name -----

Address -----

Name -----

Address -----

Dated-----, A. D. 191--.

-----,  
INDUSTRIAL ACCIDENT BOARD,  
Of the State of California.

## § 279. Form of subpoena for witness to appear before industrial accident board. (j)

Industrial Accident Board of the State of California.

-----	}	Subpœna.
-----		
Applicant--,		
vs.		
-----		
-----		
Defendant--.		

The People of the State of California Send Greeting to:

-----  
We command you, that all and singular, business and excuses

being laid aside, you appear and attend before the Industrial Accident Board of the State of California, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., then and there to testify in the above-entitled matter, now pending before said Industrial Accident Board, on the part of \_\_\_\_\_ and that you bring with you and then and there produce the following described documents, papers, books and records, to-wit: \_\_\_\_\_ and for a failure to attend you will be deemed guilty of a contempt and liable to pay to the parties aggrieved all losses and damages sustained thereby and forfeit one hundred dollars in addition thereto.

Witness: Industrial Accident Board of the State of California, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 191\_\_\_\_.

\_\_\_\_\_  
Member—Examiner.

State of California, City and County of \_\_\_\_\_, ss:

\_\_\_\_\_, of said County, being duly sworn, says that he served the within subpoena, by showing the said within original to each of the following persons named therein, and delivered a true copy thereof to each of said persons, personally, at the time and place set opposite their respective names, to-wit:

Name.	Place.	Date.
-----	-----	-----
-----	-----	-----
-----	-----	-----

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 191\_\_\_\_.

\_\_\_\_\_  
Industrial Accident Board of the State of California.

(Certificate to be executed when subpoena served by a peace or other official.)

I hereby certify that I served the within subpoena by showing the said within original to each of the following persons named therein, and delivered a true copy thereof to each of the said persons, personally, at the time and place set opposite their respective names, to-wit:

Name.	Place.	Date.
-----	-----	-----
-----	-----	-----
-----	-----	-----

\_\_\_\_\_  
(Title of Officer.)  
\_\_\_\_\_

GROUP IV.

**§ 280. Forms to be used by physicians.**—The Board has prescribed certain forms for the reports of accidents and are designated and entitled as follows: (k) Form of physician's report of accident to employé; (l) Form of request for report of accident; (m) Form of request for fuller report of accident; (n) Form of notice to doctor to file report, and are set forth in the order named in the succeeding sections:

**§ 281. Form of physician's report of accident to employé. (k)<sup>8</sup>**

Accidents which disable for less than seven days need not be reported.

PART I.

To be filled in and sent to Board within ten days after first attendance.

**1. Employer.**

- a. Employer's name \_\_\_\_\_
- b. Address: Street and No. \_\_\_\_\_ City or town \_\_\_\_\_
- c. Business \_\_\_\_\_

**2. Injured Employé.**

- a. Employé's name \_\_\_\_\_
- b. Address: Street and No. \_\_\_\_\_ City or town \_\_\_\_\_
- c. Sex \_\_\_\_\_ d. Color \_\_\_\_\_ e. Age \_\_\_\_\_ f. Occupation \_\_\_\_\_
- g. Speak English? \_\_\_\_\_
- h. If not, what language? \_\_\_\_\_

**3. Injury and First Aid.**

- a. Date of accident \_\_\_\_\_ b. Hour \_\_\_\_\_ c. Place \_\_\_\_\_
- d. Did you give first treatment? \_\_\_\_\_ e. If so, when? \_\_\_\_\_
- f. Where? \_\_\_\_\_ g. Were you called by employer or employé? \_\_\_\_\_
- h. Where was employé sent? \_\_\_\_\_
- i. Nature, location and extent of injury \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- j. How was injury caused? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

---

<sup>8</sup> Every physician who attends an employé injured by accident in the course of employment must report within ten days after first attendance, and again upon last attendance. Answer all questions as fully as possible. Information contained herein is confidential. Failure to report is a misdemeanor.

- k. Any evidence of contributory cause other than accident?-----  
 l. If so, what?-----

#### 4. Treatment.

- a. If you did not give first treatment, give date of first attendance  
 -----  
 b. Called by employer or employé?-----  
 c. Where was employé treated?----- d. Treatment, surgical  
 procedure, etc. -----  
 -----  
 e. Will employé be able to resume regular occupation?-----  
 f. If so, approximately when?-----  
 Date of report----- Made out by Dr.-----  
 Street No.----- City or town.-----

#### PART II.

This Part to be filled in and sent with Part I if the injured employé has then died, or been discharged, or the physician's attendance terminated from other cause. Otherwise detach Part II after writing in names for identification, and fill in and send to Board after last attendance.

Name of employer----- Name of injured employé-----

#### 1. Treatment.

- a. Note operations and other material facts subsequent to those  
 stated in Part I-----  
 -----  
 -----  
 b. Was patient confined to hospital?----- c. Or home?-----  
 d. How long?----- e. Professional nurse needed?-----  
 f. How long?----- g. Was patient during treatment able to  
 do any work?-----  
 h. What work and how much of the time?-----

#### 2. Result.

- a. Did injury result in death?-----  
 b. When?----- c. Did it cause any permanent  
 injury?----- d. If so, state its nature exactly-----  
 -----  
 -----  
 e. When did you discharge patient?-----  
 f. If not discharged, when last attended?-----  
 g. Patient able to return to regular work?-----  
 h. When?-----  
 i. If unable to do regular work, able to do any other?-----  
 j. When?-----  
 Date of report----- Made out by Dr.-----

§ 282. Form of request for report of accident. (l)

The Industrial Accident Board is informed that an accident happened to----- at -----on or about-----, in the course of his employment by you. If said employé was kept from work for a period of less than one week, simply so advise. If he lost one week or more, please make full report and state reasons for delay.

Kindly answer all pertinent questions on the blanks enclosed. If the employé has recovered, make both First and Supplemental Reports now. If he is still disabled, make First Report now, and Supplemental Report in conformity with the instructions printed on that form.

Very truly yours,

----- Statistician.

§ 283. Form of request for fuller report of accident. (m)

The Industrial Accident Board acknowledges, with thanks, the receipt of your report of the accident to----- . Fuller information being required, you are requested to fill in the enclosed form and to return it promptly.

It is also called to your attention that reports are required of all industrial accidents, excepting only those causing disability of less than seven days, which have happened since January 1st of this year. If you have omitted to report any such accident, please report at once.

Additional report forms have been mailed to you under separate cover. If more are needed they will be sent on request.

Yours very truly,

INDUSTRIAL ACCIDENT BOARD,

By----- Statistician.

§ 284. Form of notice to doctor to file report (n).

Dear Doctor:

It is reported that you attended----- injured in an accident on or about-----, 1912. Enclosed please find a copy of the statute relative to reporting industrial accidents, and a blank which we request you kindly to fill in and return.

No report is required if the injured person was incapacitated for less than one week. In that contingency, or if the report of your connection with the case is in error, may we request that you kindly so advise?

Your prompt attention will oblige,

Sincerely yours,

INDUSTRIAL ACCIDENT BOARD,

By-----

## GROUP V.

**§ 285. Forms to be used by casualty companies.—**

The forms required to be used by casualty companies as prescribed by the Industrial Accident Board of California are designated and entitled as follows: (o) First accident report of casualty company; (p) Supplemental accident report of casualty company, and are set forth in the order named in the sections that immediately follow:

**§ 286. Form of first accident report of casualty company. (o)**

-----  
(Give name of Company.)

Report only accidents causing disability of one week or more.

Date of report----- Insurance Co.'s No.-----

Furnished by----- Position-----

**Employer.**

(1) Name -----  
(Individual or firm name.)

(2) Address -----  
(St. No.) (City or town.)

(3) Nature of business or industry-----

(4) Insurance classification -----

(5) Location of plant-----  
(City or town.)

**Employé.**

(6) Name -----

(7) Address -----

(8) General occupation of person injured-----  
(Machinist, Laborer, etc.)

**Accident.**

(9) Date----- (10) Place-----

(11) Full description of accident, and cause thereof-----  
-----  
-----

**Injury.**

(12) Was accident fatal----- (13) If fatal, date of death-----

(14) Nature of injury-----  
-----

(15) Probable period of disability-----  
(Report in days.)

**Additional Data.**

**§ 287. Form of supplemental accident report of casualty company. (p)**

(Give name of Company.)

Date of Report \_\_\_\_\_ Insurance Co.'s No. \_\_\_\_\_

Furnished by \_\_\_\_\_ Position \_\_\_\_\_

**Employer.**

(1) Name \_\_\_\_\_

(2) Address \_\_\_\_\_

**Employé.**

(3) Name \_\_\_\_\_

(4) Address \_\_\_\_\_

**Accident.**

(5) Date \_\_\_\_\_ (6) Place \_\_\_\_\_

(7) Date of first report by Company to Board \_\_\_\_\_

**Claim for Indemnity.**

(8) Date filed with Co. \_\_\_\_\_ (9) Amount claimed \_\_\_\_\_

(10) Composition of claim \_\_\_\_\_

(Specify fully medical expenses, indemnification for wages, damages, death benefits.)

(11) State kind of policy \_\_\_\_\_

(Collective, compensation, liability.)

**Adjustment of Claim.**

(12) Has claim been adjusted \_\_\_\_\_

(13) If not, grounds of resistance \_\_\_\_\_

(14) Date suit filed \_\_\_\_\_

(15) Date of adjustment \_\_\_\_\_ (16) Amount \_\_\_\_\_

(17) In lump sum or installments \_\_\_\_\_

(If installments, specify.)

(18) Paid to \_\_\_\_\_

(19) Whose address is \_\_\_\_\_

(20) Was claim adjusted prior to termination of disability \_\_\_\_\_

(21) If so, probable period of disability from date of adjustment \_\_\_\_\_

**Additional Data.**



## CHAPTER XV.

### THE NEVADA WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
288. Nature and scope of the act.	290. Text of the Nevada Workmen's compensation law.
289. Procedure—Boards of arbitration.	

§ 288. **Nature and scope of act.**—The law of this state covers nine extra hazardous employments. It abolishes the defense of fellow servant and assumed risk and substitutes the rule of comparative negligence for the old rule of contributory negligence. The employers are made directly liable for the compensation and medical and surgical aid. The scheme of administration provides for local boards of arbitration whose actions are subject to review by the courts. Benefits in death cases are three years' earnings with a minimum of \$2,000 and a maximum of \$3,000; and in case there are no dependents, \$300. The compensation paid in case of partial and total disability begins ten days after the accident happened and continues so long as the disability lasts and is at the rate of 60 per cent. of the impairment of the injured worker's earning capacity, but in no case shall the compensation exceed \$3,000. Medical and surgical aid are paid for by the employer only in case an employé dies of an injury covered by the act and without dependents.

§ 289. **Procedure—Boards of arbitration.**—The act does not provide for a board of administration. The law is presumed to work automatically. There is no formal procedure prescribed in the act, but the act does provide for the formation of local boards of arbitration by

the employer and employé injured or by party interested in a claim on account of an injury covered by the law.

**§ 290. Text of the Nevada workmen's compensation law.**—The Nevada law became effective July 1, 1911, and provides:

Section 1. If in any employment to which this act applies personal injury disabling a workman from his regular service for more than ten days, or death by accident, arising out of and in the course of employment is caused to a workman, the workman so injured, or in case of death, the member of his family, as hereinafter defined, shall be entitled to receive from his employer, and the said employer shall be liable to pay, the compensation provided for in this act; provided, that recovery hereunder shall not be barred where such employé may have been guilty of contributory negligence where such contributory negligence is slight and that of the employer is gross in comparison, but in which event the compensation may be diminished in proportion to the amount of negligence attributable to such employé, and it shall be conclusively presumed that such employé was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employés contributed to such employé's injury; and it shall not be a defense: (1) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (2) That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow-servant. No contract, rule or regulation shall exempt the employer from any of the provisions of the preceding section of this act.

Sec. 2. "Employer" includes any body of persons corporate or incorporate and the legal personal representative of a deceased employer. "Workman" includes every person who is engaged in an employment to which

this act applies, whether by way of manual labor or otherwise, and where his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom compensation is payable. "Dependents" means wife, father, mother, husband, sister, brother, child or grandchild; provided, that they were wholly or partly dependent upon the earnings of the workman at the time of his death.

Sec. 3. This act shall apply to workmen engaged in manual or mechanical labor in the following employments within this state, each of which is hereby determined to be especially dangerous, in which from the nature, condition or means of prosecution of the work therein, extraordinary risks to the life and limb of workmen engaged therein are inherent, necessarily or substantially unavoidable, and to each of which employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

(a) The erection or demolition of any bridge or building in which there is, or in which the plans or specifications require iron or steel framework;

(b) The operation of elevators, elevating machines or derricks or hoisting apparatus used within or on the outside of any bridge or building for the conveying of material in connection with the erection or demolition of such bridge or building;

(c) Work on scaffolds of any kind elevated twenty feet or more above the ground, water or floor beneath, in the erection, construction, painting, alteration or repair of buildings, bridges or structures;

(d) Construction, operation, alteration or repair of wires, cables, switchboards or apparatus charged with electric currents;

(e) The operation on railroads of locomotives, engines, trains, motors or cars propelled by gravity, steam, electricity or other mechanical power, or the construction or repairs of railroad tracks and roadbeds over which such locomotives, engines, trains, motors, or cars are operated ; \*

(f) Construction, operation, alteration, or repairs of locomotives, engines, trains, motors or cars in or about the shops, round-houses, or other places, where the same is done ;

(g) Construction, operation, alteration or repairs to mills, smelters or mines, including every shaft or pit in the course of being sunk, and every crosscut, drift, station, winze, level or inclined planes through which workmen pass to and from work, and all works, machinery, tramways, ladders or passages, both below ground and above ground, in and adjacent to any mine ;

(h) All work necessitating dangerous proximity to gunpowder, blasting powder, dynamite or any other explosives, where the same are used as instrumentalities of the industry ;

(i) The construction of tunnels.

The employers to whom this act shall apply shall be any person or persons, association, partnership or corporation carrying on any such industry as aforesaid.

Sec. 4. Notice of accidents must be given to the employer as soon as practicable after the happening thereof, and the claim for compensation with respect to such accident within six months from the occurrence of such accident causing the injury, or in case of death, within six months from the time of death ; provided, always, that the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defense by the want, defect or inaccuracy, and that such want, defect or inaccuracy was occasioned by

mistake or other reasonable cause. Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, if known, the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers. The notice may be served by delivering the same to or at the residence or place of business of the person upon whom it is to be served, or the notice may also be served by post, by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered. Where the employer is a body of persons, natural or artificial, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

Sec. 5. The amount of compensation in case death results from injury, or for death accruing within five years as a result of injury, shall be:

(a) If the workman leave any person or persons who at the time of the accident were wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of two thousand dollars, whichever of these sums is the greater, but not exceeding in any case three thousand dollars; provided, that the total sum of any weekly payments made under this act shall be deducted from such sum; and if the period of the workman's employment by the same employer has been less than the said three years,

then the amount of his earnings during the said three years shall be deemed to be nine hundred and thirty-six times his average daily earnings during the period of his actual employment under the same employer;

(b) If the workman leave only person or persons who at the time of the accident were partly dependent upon his earnings, a sum equal to 50 per cent of the amount payable under the foregoing provisions of this section;

(c) If the workman leave no person at the time of the accident who was dependent upon his earnings, the reasonable expenses of his medical attendance and burial, not exceeding in all three hundred dollars.

Whatever sum is payable under this section in case of death of the injured workman shall be paid to his legal representatives for the benefit of such dependents, and if he leaves no such dependents, then to the public administrator, for the benefit of the person or persons to whom the expenses of medical attendance and burial are due.

Sec. 6. The amount of compensation in case of total or partial disability resulting from injury shall be:

(a) A weekly payment during the disability beginning within ten days after the injury, 60 per cent of his average weekly earnings in such employment during the previous twelve months if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, so long as there is complete disability; and that proportion of the said percentage which the depleted earning capacity for that service bears to the total disability when the injury is only partial, but in no event shall the total of all payments under this act exceed the sum of three thousand dollars;

(b) In addition to the foregoing payments, if the injured person lose both feet or both hands, or one foot and one hand, or both eyes or one eye and one foot or one hand, he shall receive, during a full period of five

years, 40 per cent of his average weekly earnings, or if he lose one foot, one hand or one eye, the additional compensation therefor shall be 15 per cent of his average weekly earnings, the amount of such earnings to be computed in the same manner as the foregoing 60 per cent; provided, that in no case shall all the payments received herein exceed in any month the whole wages earned when the injury occurs, nor shall the added percentages continue longer than to make all payments aggregate three thousand dollars.

Sec. 7. Any workman entitled to receive weekly payments under this act is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within three weeks after the injury, and thereafter at intervals not oftener than once in six weeks. A copy of the report of the examining physician shall be furnished to the workman. If a dispute then exists as to the workman's condition or amount of weekly compensation such dispute shall be determined by arbitration under this act, or by judicial procedure as hereinafter provided; provided, also, that any and all disputes arising under this act may be first submitted to a board of arbitration, and in case of failure to settle it, resort may be had to courts of justice.

Sec. 8. Arbitration proceedings shall be as follows: The employer and the workman may each choose one arbitrator, the two arbitrators thus chosen shall choose a third, and the three arbitrators shall hear the facts of the dispute within three months after having been chosen, and within two weeks thereafter, render a decision, which, if unanimous, shall be final and binding on both parties.

Sec. 9. On failure of the board of arbitration to reach an adjustment of the dispute above referred to, either party may apply to a court of competent jurisdiction, and have an adjudication as in any other contro-

versy. And the findings and judgment of the court shall be conclusive on all parties concerned. Said courts may compel the attendance of witnesses and the production of evidence, as in all other cases provided for by law, and the judgment of said court may continue and diminish or increase the weekly payments, subject to the maximum provided in this act. The prevailing party in any action, brought under the provisions of this act, shall be entitled to his costs of suit and reasonable attorney's fees; provided, that nothing in this act shall operate to defeat the constitutional right of appeal.

Sec. 10. If any employer who shall be the principal, enters into a contract with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, the said principal shall be liable to pay to any workman employed in the execution of the work, any compensation under this act, which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, then reference to the principal shall be substituted for reference to the employer, except the amount of compensation shall be calculated with reference to the earnings of the workman under the contractor or employer by whom he is immediately employed. Where such principal is liable to pay compensation he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section. Nothing in this section shall be construed as preventing a workman from recovering compensation under this act, from the contractor or subcontractor, instead of the principal; nor shall this section apply in any case where the accident shall occur elsewhere than on or in or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.



Sec. 11. Nothing in this act contained shall be held or deemed to require any workman or his personal representatives to proceed under its terms and provisions for the recovery of compensation of damages for death or accidental injury. But if the workman or his personal representatives shall so elect, he or they may disregard the provisions of this act and may pursue any other remedy at law for the recovery of such compensation of damages for or on account of such death or injury. The right of election or choice of remedies shall be exercised solely by such workman or his representatives.

Sec. 12. A claim for compensation for the injury or death of any employé or any reward or judgment entered thereon shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employé shall be so preferred, but this section shall not impair the lien of any judgment entered upon any award.

Sec. 13. The making of a lawful claim against an employer for compensation under this act for the injury or death of his employé shall operate as an assignment of any assignable cause of action in tort which the employé or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

Sec. 14. Nothing in this act contained shall be construed as impairing the right of parties interested after the injury or death of an employé to compromise or settle upon such terms as they may agree upon any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the defendants of any injured employé any interest which he may not divert by such settlement or for which he or his estate shall in the event of such settlement by him be accountable to such dependents or any of them.



## CHAPTER XVI.

### THE KANSAS WORKMEN'S COMPENSATION ACT.

Sec.		Sec.	
291.	Nature and scope of the act.	293.	Formal procedure under the act.
292.	Text of the Kansas compensation act.	294.	Form of election of employer to come within the provisions of the act.

§ 291. Nature and scope of the act.—The Kansas act is applicable to certain specified hazardous employments within the state and is without application to employés engaged in interstate commerce. The act is not compulsory, but its acceptance is optional with the employer and employé. Where the act is accepted by the employer a non-electing employé must serve notice on his employer of his refusal to be bound by the act. A non-electing employer is denied the common-law defense of fellow servant and assumption of risk and may only avail himself of the doctrine of comparative negligence. Where an employer who has elected to be bound by the act is sued by a non-electing employé, the employer may avail himself of the common-law defenses and the doctrine of comparative negligence unless the injury was caused by the wilful or gross negligence of such employer, or of any managing officer, or managing agent of said employer, or where under the law existing at the time of the death or injury such defenses are not available. The employer is not liable for injuries which do not disable the employé for more than two weeks from earning full wages at his employment, nor is he liable where the injury results from the deliberate intention of the employé to cause the injury, or is due to his failure to observe statutory regu-

lations provided for his safety or the injury results from his intoxication. The compensation is computed on the basis of fifty per cent of the impairment of the working power of the employé. Provision is made for arbitration in adjusting compensation and for the filing, cancellation, review and modification of awards; for the entry of judgments and stay of proceedings upon awards, and for the redemption of liability. The act is complicated and can not be satisfactorily discussed until the authorities administering the same have developed the construction of the law and a procedure thereunder.

**§ 292. Text of the Kansas compensation act.**—The statute is entitled an act to provide compensation for workmen injured in certain hazardous industries. It became effective January 1, 1912, and provides:

Section 1. The obligation.—If in any employment to which this act applies, personal injury by accident arising out of and in the course of employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation to the workman in accordance with this act. Save as herein provided, no such employer shall be liable for any injury for which compensation is recoverable under this act; provided, that (a) the employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he is employed; (b) if it is proved that the injury to the workman results from his deliberate intention to cause such injury, or from his wilful failure to use a guard or protection against accident required pursuant to any statute and provided for him, or a reasonable and proper guard and protection voluntarily furnished him by said employer, or solely from his deliberate breach of statutory regulations affecting safety of life or limb, or from his intoxication, any compensation in respect to that injury shall be disallowed.

Sec. 2. Reservation of liability for wrong or negligence in certain cases.—Where the injury was proximately caused by the individual negligence, either of commission or omission, of the employer, including such negligence of the directors or of any managing officer or managing agent of such employer if a corporation, or of any of the partners if such employer is a partnership, or of any member if such employer is an association, but excluding the negligence of competent employes in the performance of their duties or of the employer's duty delegated to them, the existing liability of the employer shall not be affected by this act, but in such case the injured workman, or if death results from such injury, his dependents as herein defined, if they unanimously agree, otherwise his legal representatives, may elect between any right of action against the employer upon such liability and the right to compensation under this act.

Sec. 3. Reservation of penalties.—Nothing in this act shall affect the liability of the employer or employe to a fine or penalty under any other statute.

Sec. 4. Subcontracting.—(a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of his trade or business or which he has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall

be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed. (b) Where the principal is liable to pay compensation under this section, he shall be entitled to indemnity from any person who would have been liable to pay compensation to the workman independently of this section, and shall have a cause of action therefor. (c) Nothing in this section shall be construed as preventing a workman from recovering compensation under this act from the contractor instead of the principal. (d) This section shall not apply to any case where the accident occurred elsewhere than on or in, or about the premises on which the principal has undertaken to execute work or which are otherwise under his control or management, or on, in, or about the execution of such work under his control or management. (e) A principal contractor, when sued by a workman of a subcontractor, shall have the right to implead the subcontractor. (f) The principal contractor who pays compensation voluntarily to a workman of a subcontractor shall have the right to recover over against the subcontractor.

Sec. 5. Remedies both against employer and stranger.—Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability against some person other than the employer to pay damages in respect thereof. (a) The workman may take proceedings against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and (b) If the workman has recovered compensation under this act, the person by whom the compensation was paid, or any person who has been called on to indemnify him under the section of this act relating to subcontracting, shall be entitled to indemnity from the person so liable to pay damages as

aforesaid, and shall be subrogated to the rights of the workman to recover damages therefor.

Sec. 6. Application of the act.—This act shall apply only to employment in the course of the employer's trade or business on, in, or about a railway, factory, mine or quarry, electric, building or engineering work, laundry, natural gas plant and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain; each of which employments is hereby determined to be especially dangerous, in which from the nature, condition or means of prosecution of the work therein, extraordinary risk to the life and limb of the workman engaged therein are inherent, necessary, or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for injuries to workmen. This act shall not apply in any case where the accident occurred before this act takes effect, and all rights which have accrued, by reason of any such accident, at the time of the publication of this act, shall be saved the remedies now existing therefor, and the court shall have the same power as to them as if this act had not been enacted.

Sec. 7. This act shall not be construed to apply to business or employments which, according to law, are so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged.

Sec. 8. It is hereby determined that the necessity for this law and the reason for its enactment, exist only with regard to employers who employ a considerable number of persons. This act, therefore, shall only apply to employers by whom fifteen or more workmen have been [employed] continuously for more than one month at the time of the accident and who have elected or shall elect before the accident to come within the provision

hereof; provided, however, that employers having less than fifteen workmen may elect to come within the provisions of this act in which case his employés shall be included herein, as hereinafter provided.

Sec. 9. Definitions.—In this act, unless the context otherwise requires. (a) "Railway" includes street railways and interurbans; and "employment on railways" includes work in depots, power houses, round-houses, machine shops, yards, and upon the right of way, and in the operation of its engines, cars and trains, and to employés of express companies while running on railroad trains. (b) "Factory" means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article or articles for the purpose of trade or gain or of the business carried on therein, including expressly any brick yard, meat-packing house, foundry, smelter, oil refinery, lime burning plant, steam heating plant, electric lighting plant, electric power plant and water power plant, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial gas plant, machine or repair shop, salt plant, and chemical manufacturing plant. (c) "Mine" means any opening in the earth for the purpose of extracting any minerals, and all underground workings, slopes, shafts, galleries and tunnels, and other ways, cuts and openings connected therewith, including those in the course of being opened, sunk or driven; and includes all the appurtenant structures at or about the openings of the mine, and any adjoining adjacent work place where the material from a mine is prepared for use or shipment. (d) "Quarry" means any place, not a mine, where stone, slate, clay, sand, gravel or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain, or of the employer's trade or business. (e) "Electrical work" means any kind of work in or directly connected with the construction, installation,



operation, alteration, removal or repair of wires, cables, switchboards or apparatus, used for the transmission of electrical current. (f) "Building work" means any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenance. (g) "Engineering work" means any work in the construction, alteration, extension, repair or demolition of a railway (as hereinbefore defined) bridge, jetty, dike, dam, reservoir, underground conduit, sewer, oil or gas well, oil tank, gas tank, water tower, or water works (including standpipes or mains), any caisson work or work in artificially compressed air, any work in dredging, pile driving, moving buildings, moving safes, or in laying, repairing or removing, underground pipes and connections, the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery, (including belting and other connections) and any work in grading or excavating where shoring is necessary or power machinery or blasting powder, dynamite or other high explosives is in use (excluding mining and quarrying). (h) "Employer" includes any person or body of persons corporate or unincorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association or partnership. (i) "Workman" means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer, but does not include a person who is employed otherwise than for the purpose of the employer's trade or business. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents, as hereinafter defined, or to his legal representative, or where he is a minor or incompetent, to his guardian. (j) "Dependents" means such members of the workman's family as were wholly or in part dependent upon the workman at the time of the accident. And "members of a family" for the pur-

poses of this act means only widow or husband, as the case may be, and children; or if no widow, husband or children, then parents and grandparents, or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section parents include step-parents, children include step-children, and grandchildren include step-grandchildren, and brothers and sisters include step-brothers and step-sisters, and children and parents include that relation by legal adoption.

Sec. 10. Incompetency of workman.—In case an injured workman is mentally incompetent or a minor, or where death results from the injury, in case any of his dependents as herein defined is mentally incompetent or a minor, at the time when any right, privilege or election accrues to him under this act, his guardian may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in this act provided for, shall run, so long as such incompetent or minor has no guardian.

Sec. 11. Amount of compensation.—The amount of compensation under this act shall be, (a) Where death results from injury: (1) If the workman leaves any dependents wholly dependent upon his earnings, an amount equal to three times his earnings for the preceding year but not exceeding thirty-six hundred dollars and not less than twelve hundred dollars, provided, such earnings shall be computed upon the basis of the scale which he received or would have been entitled to receive had he been at work, during the thirty days next preceding the accident; and, if the period of the workmen's employment by the said employer had been less than one year, then the amount of his earnings during the said year shall be deemed to be fifty-two times his average weekly earnings during the period of his actual employment under said employer; provided, that the amount of any payments made under this act and

any lump sum paid hereunder for such injury from which death may thereafter result shall be deducted from such sum; and provided, however, that if the workman does not leave any dependents, citizens of and residing at the time of the accident in the United States or the Dominion of Canada, the amount of compensation shall not exceed in any case seven hundred and fifty dollars. (2) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings, such proportion of the amount payable under the foregoing provisions of this section, as may be agreed upon or determined to be proportionate to the injury to the said dependents; and (3) if he leaves no dependents, the reasonable expense of his medical attendance and burial, not exceeding one hundred dollars. (b) Where total incapacity for work results from injury, periodical payments during such incapacity, commencing at the end of the second week, equal to fifty per cent of his average weekly earnings computed as provided in section 12, but in no case less than six dollars per week or more than fifteen dollars per week. (c) When partial incapacity for work results from injury, periodical payments during such incapacity, commencing at the end of the second week, shall not be less than twenty-five per cent, nor exceed fifty per cent, based upon the average weekly earnings computed as provided in section 12, but in no case less than three dollars per week or more than twelve dollars per week; provided, however, that if the workman is under twenty-one years of age at the date of the accident and the average weekly earnings are less than \$10.00 his compensation shall not be less than seventy-five per cent of his average earnings. No such payment for total or partial disability shall extend over a period exceeding ten years.

Sec. 12. Rule for compensation.—For the purposes of the provisions of this act relating to “earnings” and “average earnings” of a workman, the following rules

shall be observed: (a) "Average earnings" shall be computed in such manner as is best calculated to give the average rate per week at which the workman was being remunerated for the 52 weeks prior to the accident. Provided, that where by reason of the shortness of time during which the workman has been in the employment of his employer, or the casual nature or the terms of the employment, it is impracticable to compute the rate of remuneration, regard shall be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person employed, by a person in the same grade employed in the same class of employment and in the same district. (b) Where the workman had entered into concurrent contract of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his "earnings" and his "average earnings" shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident. (c) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by his absence of work due to illness or any other unavoidable cause. (d) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed upon him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings. (e) In fixing the amount of the payment, allowance shall be made for any payment or benefit which the workman may receive from the employer during his period of incapacity. (f) In the case of partial incapacity the payments shall be computed to equal, as closely as possible, fifty per cent of the difference between the amount of the "average

earnings" of the workman before the accident, to be computed as herein provided, and the average amount which he is most probably able to earn in some suitable employment or business after the accident, subject however, to the limitations hereinbefore provided.

Sec. 13. Payments to the injured workman.—The payments shall be made at the same time, place and in the same manner as the wages of the workman were payable at the time of the accident, but a judge of any district court having jurisdiction upon the application of either party may modify such regulation in a particular case as to him may seem just.

Sec. 14. Compensation to dependents, etc.—Where death results from the injury and the dependents of the deceased workman as herein defined, have agreed to accept compensation, and the amount of such compensation and the apportionment thereof between them has been agreed to or otherwise determined, the employer may pay such compensation to them accordingly (or to an administrator if one be appointed) and thereupon be discharged from all further liability for the injury. Where only the apportionment of the agreed compensation between the dependents is not agreed to, the employer may pay the amount into any district court having jurisdiction, or to the administrator of the deceased workman, with the same effect. Where the compensation has been so paid into court or to an administrator, the proper court, upon the petition of such administrator or any of such dependents, and upon such notice and proof as it may order shall determine the distribution thereof among such dependents. Where there are no dependents, medical and funeral expenses may be paid and distributed in like manner.

Sec. 15. The payments due under this act, as well as any judgment obtained thereunder, shall not be assignable or subject to levy, execution or attachment, except for medicine, medical attention and nursing and

no claim of any attorney at law for service rendered in securing such indemnity or compensation or judgment shall be an enforceable lien thereon, unless the same has been approved in writing by the judge of the court where said case was tried; but if no trial was had, then by any judge of the district court of this state to whom such matter has been regularly submitted, on due notice to the party or parties in interest of such submission.

Sec. 16. Reports as to accidents and compensation.—Employers affected by this act shall report annually to the state commissioner and factory inspector such reasonable particulars in regard thereto as he may require, including particulars as to all releases of liability under this act and any other law. The penalty for failure to report or for false report shall invalidate any such release of liability.

Sec. 17. Medical examination.—(a) After an injury to the employé, if so requested by his employer, the employé must submit himself for examination at some reasonable time to a reputable physician selected by the employer, and from time to time thereafter during the pendency of his claim for compensation, or during the receipt by him for payment, under this act, but he shall not be required to so submit himself, more than once in two weeks unless in accordance with such orders as may be made by the proper court or judge thereof. Either party may upon demand require a report of any examination made by the physician of the other party upon payment of a fee of one dollar therefor. (b) If the employés request he shall be entitled to have a physician of his own selection present at the time to participate in such examinations. (c) Unless there has been a reasonable opportunity thereafter for such physician selected by the employé to participate in the examination in the presence of the physician selected by the employer, the physician selected by the employer shall not be permitted afterwards to give evidence of the condition of

the employé in a dispute as to the injury. (d) Except as provided herein in this act there shall be no other disqualification or privilege preventing the testimony of a physician who actually makes an examination.

Sec. 18. Medical examination by neutral physician.—In case of a dispute as to the injury, the committee, or arbitrator as hereinafter provided, or the judge of the district court shall have the power to employ a neutral physician of good standing and ability, whose duty it shall be, at the expense of the parties, to make an examination of the injured person, as the court may direct, on the petition of either or both the employer and employé or dependents.

Sec. 19. Testimony by court physician.—If the employer or the employé has a physician make such an examination and no reasonable opportunity is given to the other party to have his physician make examination, then, in case of a dispute as to the injury, the physician of the party making such examination shall not give evidence before the court unless a neutral physician either has examined or then does examine the injured employé and give testimony regarding the injuries.

Sec. 20. Refusal of medical examination.—If the employé shall refuse examination by physician selected by the employer, with the presence of a physician of his own selection, and shall refuse an examination by the physician appointed by the court, he shall have no right to compensation during the period from refusal until he, or someone in his behalf, notifies the employer or the court that he is willing to have such examination.

Sec. 21. Certificate of physician.—A physician making an examination shall give to the employer and to the workman a certificate as to the condition of the workman, but such certificate shall not be competent evidence of that condition unless supported by his testimony if his testimony would have been admissible.

Sec. 22. Notice and claim.—Proceedings for the

recovery of compensation under this act shall not be maintainable unless written notice of the accident, stating the time, place, and particulars thereof, and the name and address of the person injured, has been given within ten days after the accident, and unless a claim for compensation has been made within six months after the accident, or in case of death, within six months from the date thereof. Such notice shall be delivered by registered mail, or by delivery to the employer. The want of, or any defect in such notice, or in its service, shall not be a bar unless the employer proves that he has, in fact, been thereby prejudiced, or if such want or defect was occasioned by mistake, physical or mental incapacity or other reasonable cause, and the failure to make a claim within the period above specified shall not be a bar, if such failure was occasioned by a mistake, physical or mental incapacity or other reasonable cause.

Sec. 23. Agreements.—Compensation due under this act may be settled by agreement. Every such agreement, other than a release, shall be in the form hereinafter provided.

Sec. 24. Arbitrations.—If compensation be not so settled by agreement: (a) If any committee representative of the employer and the workman exists, organized for the purpose of settling disputes under this act, the matter shall, unless either party objects by notice in writing delivered or sent by registered mail to the other party before the committee meets to consider the matter, be settled in accordance with its rules by such committee or by an arbitrator selected by it. (b) If either party so objects, or there is no such committee, or the committee or the arbitrator to whom it refers the matter fails to settle it within sixty days from the date of the claim, the matter may be settled by a single arbitrator agreed on by the parties, or appointed by any judge of a court where an action might be maintained. The consent to arbitration shall be in writing and signed by the



parties and may limit the fees of the arbitrator and the time within which the award must be made. And unless such consent and the order of appointment expressly refers other questions, only the question of the amount of compensation shall be deemed to be in issue.

Sec. 25. The duties of arbitrator.—The arbitrator shall not be bound by technical rules of procedure or evidence, but shall give the parties reasonable opportunity to be heard and act reasonably and without partiality. He shall make and file his award, with the consent to arbitration attached in the office of the clerk of the proper district court within the time limited in the consent, or if no time limit is fixed therein, within sixty days after his selection, and shall give notice of such filing to the parties by mail.

Sec. 26. Arbitrator's fees.—The arbitrator's fees shall be fixed by the consent to arbitration or be agreed to by the parties before the arbitration, and if not so fixed or agreed to, they shall not exceed \$10.00 per day, for not to exceed ten days, and disbursements for expense. The arbitrator shall tax or apportion the costs of such fees in his discretion and shall add the amount taxed or apportioned against the employer to the first payment made under the award, and he shall note the amount of his fees on the award, and shall have a lien therefor on the first payments due under the award.

Sec. 27. Form of agreements and award.—Every agreement for compensation and every award shall be in writing, signed and acknowledged by the parties or by the arbitrator or secretary of the committee hereinbefore referred to, and shall specify the amount due and unpaid by the employer to the workman up to the date of the agreement or award, and if any, the amount of the payments thereafter to be paid by the employer to the workman and the length of time such payments shall continue.

Sec. 28. Filing agreements, awards, etc.—It shall

be the duty of the employer to file or cause to be filed every release of liability hereunder, every agreement for or award of compensation, or modifying an agreement for or award of compensation, under this act, if not filed by the committee or arbitrator, to which he is a party, or a sworn copy thereof, in the office of the district court in the county in which the accident occurred within sixty days after it is made, otherwise it shall be void as against the workman. The said clerk shall accept, receipt for, and file any such release, agreement or award, without fee, and record and index it in the book kept for that purpose. Nothing herein shall be construed to prevent the workman from filing such agreement or award.

Sec. 29. Agreements and awards—When canceled.—At any time within one year after an agreement or award has been so filed, a judge of a district court having jurisdiction may, upon the application of either party, cancel such agreement or award, upon such terms as may be just, if it be shown to his satisfaction that the workman has returned to work and is earning approximately the same or higher wages as or than he did before the accident, or that the agreement or award has been obtained by fraud or undue influence, or that the committee or arbitrator making the award acted without authority or was guilty of serious misconduct, or that the award is grossly inadequate or grossly excessive, or if the employé absents himself so that a reasonable examination of his condition cannot be made, or has departed beyond the boundaries of the United States or Canada.

Sec. 30. Staying proceedings upon agreement or award.—At any time after the filing of an agreement or award and before judgment has been granted thereon, the employer may stay proceedings thereon by filing in the office of the clerk of the district court wherein such agreements or award is filed: (a) A proper certificate

of a qualified insurance company that the amount of the compensation to the workman is insured by it; (b) A proper bond undertaking to secure the payment of the compensation. Such certificate or bond shall first be approved by a judge of the said district court.

Sec. 31. Judgment upon agreement or award.—At any time after an agreement or award has been filed, the workman may apply to the said district court for judgment against the employer for a lump sum equal to eighty per cent of the amount of payments due and unpaid and prospectively due under the agreement or award; and, unless the agreement or award be stayed, modified or canceled, or the liability thereunder be redeemed or otherwise discharged, the court shall examine the workman under oath, and if satisfied that the application is made because of doubt as to the security of his compensation, shall compute the sum and direct judgment accordingly, as if in an action; provided, that if the employer shall give a good and sufficient bond, approved by the court, no execution shall issue on such judgment so long as the employer continues to make payments in accordance with the original agreement or award undiminished by the discount.

Sec. 32. Review or modification of agreement or award.—An agreement or award may be modified at any time by a subsequent agreement; or, at any time after one year from the date of filing; it may be reviewed, upon the application of either party on the ground that the incapacity of the workman has subsequently increased or diminished. Such application shall be made to the said district court; and, unless the parties consent to arbitration, the court may appoint a medical practitioner to examine the workman and report to it; and upon his report and after hearing the evidence of the parties, the court may modify such agreement or award, as may be just, by ending, increasing or dimin-

ishing the compensation, subject to the limitations hereinbefore provided.

Sec. 33. Redemption of liability.—Where any payment has been continued for not less than six months the liability therefor may be redeemed by the employer by the payment to the workman of a lump sum of an amount equal to eighty per cent of the payments which may become due according to the award, such amount to be determined by agreement, or, in default thereof, upon application, to a judge of a district court having jurisdiction. Upon paying such amount the employer shall be discharged from all further liability on account of the injury, and be entitled to a duly executed release, upon filing which or other due proof of payment, the liability upon any agreement or award shall be discharged of record.

Sec. 34. Insurance.—Where the payment of compensation to the workman is insured, by a policy or policies, at the expense of the employer, the insurer shall be subrogated to the rights and duties under this act of the employer, so far as appropriate.

Sec. 35. Courts.—All references hereinbefore to a district court of the state of Kansas having jurisdiction of a civil action between the parties shall be construed as relating to the then existing code of civil procedure. Such court shall make all rules necessary and appropriate to carry out the provisions of this act.

Sec. 36. Actions.—A workman's right to compensation under this act, may, in default of agreement or arbitration, be determined and enforced by action in any court of competent jurisdiction. In every such action the right to trial by jury shall be deemed waived and the case tried by the court without a jury, unless either party, with his notice of trial, or when the case is placed upon the calendar—demand a jury trial. The judgment in the action, if in favor of the plaintiff, shall be for a lump sum equal to the amount of the payments

then due and prospectively due under this act, with interest on the payments overdue, or, in the discretion of the trial judge, for periodical payments as in an award. Where death results from injury, the action shall be brought by the dependent or dependents entitled to the compensation or by the legal representative of the deceased for the benefit of the dependents as herein defined; and in such action the judgment may provide for the proportion of the award to be distributed to or between the several dependents; otherwise such proportions shall be determined by the proper probate court. An action to set aside a release or other discharge of liability on the ground of fraud or mental incompetency may be joined with an action for compensation under this act. No action or proceeding provided for in this act shall be brought or maintained outside of the state of Kansas, and notice thereof may be given by publication against nonresidents of the state in the manner now provided by article 7 of chapter 95, General Statutes of Kansas of 1909 so far as the same may be applicable, and by personal service of a true copy of the first publication within twenty-one days after the date of the said first publication, unless excused by the court upon proper showing that such service cannot be made.

Sec. 37. When the cause of action accrues.—The cause of action shall be deemed in every case, including a case where death results from the injury to have accrued to the injured workman at the time of the accident; and the time limited in which to commence an action for compensation therefor shall run as against him, his legal representatives and dependents from that date.

Sec. 38. Attorney's liens.—Contingent fees of attorneys for services and proceedings under this act shall in every case be subject to approval by the court.

Sec. 39. Certificate required.—If the superintendent of insurance by and with the advice and written

approval of the attorney general certifies that any scheme of compensation, benefit or insurance for the workman of an employer in any employment to which this act applies, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workman, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act or their equivalents, the employer, may, while the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act; and thereupon the employer shall be liable only in accordance with that scheme; but, save as aforesaid, this act shall not apply notwithstanding any contract to the contrary made after this act becomes a law.

Sec. 40. Condition to certificate.—No scheme shall be so certified which does not contain suitable provisions for the equitable distribution of any moneys or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already accrued, if and when such certificate is revoked or the scheme otherwise terminated.

Sec. 41. Certificate to be revocable.—If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or other valid and substantial reasons therefor exist, the superintendent of insurance by and with the attorney general shall revoke the certificate and the scheme shall thereby be terminated.

Sec. 42. Information to be reported.—Where a certified scheme is in effect the employer shall answer all such inquiries and furnish all such accounts in regard thereto as may be required by the superintendent.

Sec. 43. The superintendent of insurance may make all rules and regulations necessary to carry out the purposes of the four preceding sections.

Sec. 44. All employers as defined by this act who shall elect to come within the provisions of this act and of all acts amendatory hereof shall do so by filing a statement to such effect with the secretary of state of this state at any time after taking effect of this act, which election shall be binding upon such employer for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or of any succeeding year, file in the office of the secretary of state a notice in writing to the effect that he withdraws his election to be subject to the provisions of this act. Notice of such election or withdrawal shall be forthwith posted by such employer in conspicuous places in and about his place of business.

Sec. 45. Every employé entitled to come within the provisions of this act, shall be presumed to have done so unless he serve written notice, before injury, upon his employer that he elects not to accept thereunder and thereafter any such employé desiring to change his election shall only do so by serving written notice thereof upon his employer. Any contract wherein an employer requires of an employé as a condition of employment that he shall elect not to come within the provisions of this act shall be void.

Sec. 46. In any action to recover damages for a personal injury sustained within this state by an employé (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, where such employer is within the pro-

visions hereof, it shall not be a defense to any employer (as herein in this act defined) who shall not have elected, as hereinbefore provided, to come within the provisions of this act: (a) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; (c) that such employé was guilty of contributory negligence but such contributory negligence of said employé shall be considered by the jury in assessing the amount of recovery.

Sec. 47. In an action to recover damages for a personal injury sustained within this state by an employé (entitled to come within the provisions of this act) while engaged in the line of his duty as such or for death resulting from personal injury so sustained in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer, and where such employer has elected to come and is within the provisions of this act as hereinbefore provided, it shall be a defense for such employer in all cases where said employé has elected not to come within the provisions of this act: (a) That the employé either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; (c) that said employé was guilty of contributory negligence; provided, however, that none of these defenses shall be available where the injury was caused by the willful or gross negligence of such employer, or of any managing officer, or managing agent of said employer, or where under the law existing at the time of the death or injury such defenses are not available.

Sec. 48. Nothing in this act shall be construed to amend or repeal section 6999 of the General Statutes of Kansas of 1909, or House bill No. 240 of the Session of



1911, the same being "An act relating to the liability of common carriers by railroads to their employes in certain cases, and repealing all acts and parts of acts so far as the same are in conflict herewith."

§ 293. **Formal procedure under the act.**—The Kansas Workmen's Compensation Act is administered by the Bureau of Labor and Factory Inspection, whose offices are located in the Capitol Building at Topeka. The only printed matter used by this bureau in connection with the administration of this law at the time this is written is "a blank form for use of employers in filing notice of election to be governed by this law." This form is set out in the following section:

§ 294.—**Form of election of employer to come with-  
in the provisions of the act.**

State of Kansas,

----- County, } ss:

To the Secretary of State:

You are hereby notified that-----hereby elects to come under the provisions of Chapter 218, Session Laws of 1911, being an act entitled "An Act to Provide Compensation for Workmen Injured in Certain Hazardous Industries"; that said-----is an employer of labor and is engaged in the business of-----in the State of Kansas.

Before me, the undersigned, a notary public in and for the county of-----comes-----who is personally known to me to be the same person who executed the foregoing instrument of writing, and such person duly acknowledged the same to be his voluntary act and deed, and that he has full authority and power to sign said instrument in writing and to execute the same for the purposes in said writing therein set out.

Witness my hand and notarial seal, this-----day of-----19---

-----  
Notary Public.

My commission expires-----19---



## CHAPTER XVII.

### THE NEW HAMPSHIRE WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
295. The nature and scope of the act.	299. Form of declaration of employer. (a)
296. Text of the New Hampshire compensation act.	300. Form of report of industrial accident to bureau of labor. (b)
297. Administration of the New Hampshire workmen's compensation act.	301. Form of supplemental report of industrial accident to bureau of labor. (c)
298. Formal procedure—List of forms.	

§ 295. The nature and scope of act.—The New Hampshire Act applies to five extra hazardous employments and is optional in form. The employer in these employments is denied the defenses of fellow servant and assumption of risk but not that of contributory negligence. The employé is denied relief where his injury is caused in full or in part by intoxication, violation of law or serious or wilful misconduct. The injuries covered by the act are those which incapacitate the employé for more than two weeks. The employé loses all right to the benefits of the act by commencing suit for his injuries after acceptance of its provisions. The provisions of Sec. 2, the liability section of the act, shall not apply to any employer who shall have filed with the Commissioner of Labor his declaration in writing that he accepts the succeeding sections, viz. 3 to 13 inclusive, and shall have satisfied the Commissioner of his financial ability to comply or has filed his bond in such form and amount as the Commissioner may prescribe. Any person aggrieved by any decision of the commission respecting the filing of declaration or bonds or matters connected therewith by the employer may ap-

ply by petition to any justice of the superior court for a review of such decision. The justice's decision thereon is final. The compensation provided by the act may be determined by agreement, or by an action at equity in any court having jurisdiction of an action for recovery of damages for negligence. In death cases the court may apportion to each dependent his share of the judgment, and in the absence of such determination any person interested in the judgment may bring proceedings in a probate court of proper jurisdiction and have the apportionment made.

**§ 296. Text of the New Hampshire compensation act.**—The act became operative January 1, 1912. It provides:

Section 1. This act shall apply only to workmen engaged in manual or mechanical labor in the employments described in this section, which, from the nature, conditions or means of prosecution of such work, are dangerous to the life and limb of workmen engaged therein, because in them the risks of employment and the danger of injury caused by fellow servants are great and difficult to avoid. (a) The operation on steam or electric railroads of locomotives, engines, trains or cars, or the construction, alteration, maintenance or repair of steam railroad tracks or road beds over which such locomotives, engines, trains or cars are or are to be operated. (b) Work in any shop, mill, factory or other place on, in connection with or in proximity to any hoisting apparatus, or any machinery propelled or operated by steam or other mechanical power in which shop, mill, factory or other place five or more persons are engaged in manual or mechanical labor. (c) The construction, operation, alteration or repair of wires or lines of wires, cables, switch-boards or apparatus, charged with electric currents. (d) All work necessitating dangerous proximity to gunpowder, blasting pow-

der, dynamite or any other explosives, where the same are used as instrumentalities of the industry, or to any steam boiler owned or operated by the employer, provided injury is occasioned by the explosion of any such boiler or explosive. (e) Work in or about any quarry, mine or foundry. As to each of said employments it is deemed necessary to establish a new system of compensation for accidents to workmen.

Sec. 2. If, in the course of any of the employments above described, personal injury by accident arising out of and in the course of the employment is caused to any workman employed therein, in whole or in part, by failure of the employer to comply with any statute, or with any order made under authority of law, or by the negligence of the employer or any of his or its officers, agents or employés, or by reason of any defect or insufficiency due to his, its or their negligence in the condition of his or its plant, ways, works, machinery, cars, engines, equipment, or appliances, then such employer shall be liable to such workmen for all damages occasioned to him, or, in case of his death, to his personal representatives for all damages now recoverable under the provisions of chapter 191 of the Public Statutes. The workman shall not be held to have assumed the risk of any injury due to any cause specified in this section; but there shall be no liability under this section for any injury to which it shall be made to appear by a preponderance of evidence that the negligence of the plaintiff contributed. The damages provided for by this section shall be recovered in an action on the case for negligence.

Sec. 3. The provisions of section 2 of this act shall not apply to any employer who shall have filed with the commissioner of labor his declaration in writing that he accepts the provisions of this act as contained in the succeeding sections, and shall have satisfied the commissioner of labor of his financial ability to comply with its

provisions, or shall have filed with the commissioner of labor a bond, in such form and amount as the commissioner may prescribe, conditioned on the discharge by such employer of all liability incurred under this act. Such bond shall be enforced by the commissioner of labor for the benefit of all persons to whom such employer may become liable under this act in the same manner as probate bonds are enforced. The commissioner may, from time to time, order the filing of new bonds, when in his judgment such bonds are necessary; and after thirty days from the communication of such order to any employer, such employer shall be subject to the provisions of section 2 of this act until such order has been complied with. The employer may at any time revoke his acceptance of the provisions of the succeeding sections of this act by filing with the commissioner of labor a declaration to that effect, and by posting copies of such declaration in conspicuous places about the place where his workmen are employed. Any person aggrieved by any decision of the commissioner under this section may apply by petition to any justice of the superior court for a review of such decision and said justice on notice and hearing shall make such order affirming, reversing or modifying such decision as justice may require; and such order shall be final. Such employer shall be liable to all workmen engaged in any of the employments specified in section 1, for any injury arising out of and in the course of their employment, in the manner provided in the following sections of this act. Provided, that the employer shall not be liable in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed, and, provided, that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the intoxication, violation of law, or serious or wilful misconduct of the workman. Provided, fur-

ther, that the employer shall at the election of the workman, or his personal representative, be liable under the provisions of section 2 of this act for all injury caused in whole or in part by wilful failure of the employer to comply with any statute, or with any order made under authority of law.

Sec. 4. The right of action for damages caused by any such injury, at common law, or under any statute in force on January one, nineteen hundred and eleven, shall not be affected by this act, but in case the injured workman, or in event of his death his executor or administrator, shall avail himself of this act, either by accepting any compensation hereunder, by giving the notice hereinafter prescribed, or by beginning proceedings therefor in any manner on account of any such injury, he shall be barred from recovery in every action at common law or under any other statute on account of the same injury. In case after such injury the workman, or in the event of his death his executor or administrator, shall commence any action at common law or under any statute other than this act against the employer therefor, he shall be barred from all benefit of this act in regard thereto.

Sec. 5. No proceedings for compensation under this act shall be maintained unless notice of the accident as hereinafter provided has been given to the employer as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured and during such disability, and unless claim for compensation has been made within six months from the occurrence of the accident, or in case of the death of the workman, or in the event of his physical or mental incapacity, within six months after such death or the removal of such physical or mental incapacity, or in the event that weekly payments have been made under this article, within six months after such payments have ceased, but no want or defect

or inaccuracy of a notice shall be a bar to the maintenance of proceedings unless the employer proves that he is prejudiced by such want, defect or inaccuracy. Notice of the accident shall apprise the employer of the claim for compensation under this article, and shall state the name and address of the workman injured, and the date and place of the accident. The notice may be served personally or by sending it by mail in a registered letter addressed to the employer at his last known residence or place of business.

Sec. 6. (1) The amount of compensation shall be, in case death results from injury: (a) If the workman leaves any widow, children or parents, resident of this state, at the time of his death, then wholly dependent on his earnings, a sum to compensate them for loss, equal to one hundred and fifty times the average weekly earnings of such workman when at work on full time during the preceding year during which he shall have been in the employ of the same employer, or if he shall have been in the employment of the same employer for less than a year then one hundred and fifty times his average weekly earnings on full time for such less period. But in no event shall such sum exceed three thousand dollars. Any weekly payments made under this act shall be deducted from the sum so fixed. (b) If such widow, children or parents at the time of his death are in part only dependent upon his earnings, such proportion of the benefits provided for those wholly dependent as the amount of the wage contributed by the deceased to such partial dependents at the time of injury bore to the total wage of the deceased. (c) If he leaves no such dependents, the reasonable expenses of his medical attendance and burial, not exceeding one hundred dollars. Whatever sum may be determined to be payable under this act in case of death of the injured workman shall be paid to his legal representative for the benefit of such dependents, or if he leaves no such



dependents, for the benefit of the persons to whom the expenses of medical attendance and burial are due.

(2) Where total or partial incapacity for work at any gainful employment results to the workman from the injury, a weekly payment commencing at the end of the second week after the injury and continuing during such incapacity, subject as herein provided, not exceeding fifty per centum of his average weekly earnings when at work on full time during the preceding year during which he shall have been in the employment of the same employer, or if he shall have been in the employment of the same employer for less than a year, then a weekly payment of not exceeding one-half the average weekly earnings on full time for such less period. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average earnings of the workman before the accident and the average amount he is able to earn thereafter as wages in the same employment or otherwise. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may have received from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in the same employment or otherwise after the accident, but shall amount to one-half of such difference. In no event shall any compensation paid under this act exceed the damage suffered, nor shall any weekly payment payable under this act in any event exceed ten dollars a week or extend over more than three hundred weeks from the date of the accident. Such payment shall continue for such period of three hundred weeks provided total or partial disability continue during such period. No such payment shall be

due or payable for any time prior to the giving of the notice required by section 5 of this act.

Sec. 7. Any workman entitled to receive weekly payments under this act is required, if requested by the employer, to submit himself for examination by a duly qualified medical practitioner or surgeon provided and paid for by the employer, at a time and place reasonably convenient for the workman, within two weeks after the injury, and thereafter at intervals not oftener than once in a week. If the workman refuses to submit to such examination, or obstructs the same, his right to weekly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Sec. 8. In case an injured workman shall be mentally incompetent at the time when any right or privilege accrues to him under this act, the guardian of the incompetent appointed pursuant to law may, on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege, and no limitation of time in this act provided for shall run so long as said incompetent workman has no guardian.

Sec. 9. Any question as to compensation which may arise under this act shall be determined by agreement or by an action at equity, as hereinafter provided. In case the employer fail to make compensation as herein provided, the injured workman, or his guardian, if such be appointed, or his executor or administrator, may then bring an action to recover compensation under this act in any court having jurisdiction of an action for recovery of damages for negligence for the same injury between the same parties. Such action shall be by petition in equity, which may be made returnable at the appropriate term of the superior court or may be filed in the office of the clerk of the superior court and pre-

sented in term time or vacation to any justice of said court, who on reasonable notice shall hear the parties and render judgment thereon. The judgment in such action if in favor of the plaintiff shall be for a lump sum equal to the amount of payments then due and prospectively due under this act. In such action by an executor or administrator the judgment may provide the proportions of the award or the costs to be distributed to or between the several dependents. If such determination is not made it shall be determined by the probate court in which such executor or administrator is appointed, in accordance with this act, on petition of any party interested, on such notice as such court may direct. Any employer who has declared his intention to act under the compensation features of this act shall also have the right to apply by similar proceedings to the superior court or to any justice thereof for a determination of the amount of the weekly payments to be paid the injured workman, or of a lump sum to be paid the injured workman in lieu of such weekly payments; and either such employer or workman may apply to said superior court or to any justice thereof in similar proceeding for the determination of any other question that may arise under the compensation feature of this act; and said court or justice, after reasonable notice and hearing, may make such order as to the matter in dispute and taxable costs as justice may require.

Sec. 10. Any person entitled to weekly payments under this act against any employer shall have the same preferential claim therefor against the assets of the employer as is allowed by law for a claim by such person against such employer for unpaid wages or personal services. Weekly payments due under this act shall not be assignable or subject to levy, execution, attachment or satisfaction of debts. Any right to receive compensation under this act shall be extinguished by the death of the person entitled thereto.

Sec. 11. No claim of any attorney-at-law for any

contingent interest in any recovery under this act for services in securing such recovery or for disbursements shall be an enforceable lien on such recovery, unless the account of the same be approved in writing by a justice of the superior court, or, in case the same be tried in any court, by the justice presiding at such trial.

Sec. 12. Every employer subject to the provisions of this act, shall from time to time make to the commissioner of labor such returns as to its operation as said commissioner may require upon blanks to be furnished by said commissioner. Any employer failing to make such returns when required by said commissioner shall, until such returns are made, be subject to the provisions of section 2 of this act.

§ 297. **Administration of the New Hampshire workmen's compensation act.**—The New Hampshire compensation act does not provide for a board charged with duties of administration. In this respect it is similar to the New Jersey act and is presumed to work automatically. The act, however, provides that the commissioner of labor shall prescribe certain forms of declaration and reports of industrial accidents to be filled out by employers covered by the act and filed with the bureau of labor.

§ 298. **Formal procedure—List of forms.**—The commissioner of labor of New Hampshire, pursuant to the provisions of the act, has prescribed three forms which are required to be used by employers covered by the act. They are designated as follows: (a) Declaration of employer that he accepts the provision of the act; (b) Report of industrial accident—Part I; (c) Supplemental report of industrial accident—Part II.

§ 299. **Form of declaration of employer. (a)**

To the Commissioner of Labor of the State of New Hampshire,  
Concord, N. H.:

The undersigned\_\_\_\_\_in accordance  
with Section 3 of Chapter 163 of the Laws of New Hampshire of

1911, hereby declares that it accepts the provisions of the said Chapter 163, Laws of 1911, relating to compensation payable to injured workmen in its employ, and attaches hereto a copy of its last financial statement for the period ending\_\_\_\_\_as evidence of its ability to comply with the provisions of the said act.

(SEAL) \_\_\_\_\_

ATTEST:

BY \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

On this\_\_\_\_\_day of\_\_\_\_\_in the year\_\_\_\_\_before me personally came\_\_\_\_\_to me known, who being by me duly sworn, did depose and say that he resides in\_\_\_\_\_; that he is the\_\_\_\_\_of\_\_\_\_\_the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(SEAL) \_\_\_\_\_

Notary Public.

### § 300. Form of report of industrial accident to bureau of labor. (b)<sup>1</sup>

#### Part I.

Employer, place and time.

No.\_\_\_\_\_Employer's name\_\_\_\_\_Office address: Street and No.\_\_\_\_\_City or town\_\_\_\_\_State\_\_\_\_\_Nature of business\_\_\_\_\_Location of plant or place of work where accident occurred, if not at office address\_\_\_\_\_

The injured person—

Name \_\_\_\_\_Address \_\_\_\_\_Age \_\_\_\_\_Nativity \_\_\_\_\_  
What language spoken and understood?\_\_\_\_\_Parent or guardian, if minor\_\_\_\_\_State whether manual or mechanical labor, and employment as specified in a, b, c, d, e, of section 1, chapter 163, Laws of 1911<sup>1a</sup>\_\_\_\_\_Length of experience (here and elsewhere) in this employment\_\_\_\_\_Regular occupation, or not\_\_\_\_\_Piece or time worker\_\_\_\_\_Wages, or average earnings per day \_\_\_\_\_Working days per week\_\_\_\_\_

The injury—

Date an exact hour of accident\_\_\_\_\_Date notice was received by employer\_\_\_\_\_State fully nature and extent of injury\_\_\_\_\_Employment or department in which accident occurred\_\_\_\_\_

Machine or appliance causing Accident—

Name of machine, tool, device or other appliance\_\_\_\_\_Did the

<sup>1</sup> Immediate report.

<sup>1a</sup> See ante, § 296.

employé thoroughly understand the machine, tool or device and was he properly instructed regarding its operation; cleaning when not in operation; how to shut off power quickly-----

What safeguards?-----Was machine, or part of machine, or appliance on which accident occurred defective?-----

Had management been notified of defect?-----

Medical Attendance—

Attending physician, or hospital where sent-----

Name -----Address -----

## § 301. Form of supplemental report of industrial accident to bureau of labor. (c)<sup>2</sup>

### Part II.

Name of employer-----Name of injured person-----

Extent of Disability—

Did injury result in death?-----If not, has it caused—

a. Permanent total disability (meaning inability to do any work)?  
-----If so, state nature of permanent injury or condition causing such disability-----

b. Permanent partial disability (meaning ability to do some work but not of same kind or amount as before accident)?-----  
If so, state nature of permanent injury or condition causing such disability-----On what date was work resumed?-----  
Present wages, or average earnings, per day at such work-----

c. Temporary disability (meaning that injured person has been able to resume same kind and amount of work as before accident)?-----If so, for how many working days did such disability last?-----

d. Disability, the extent of which is not known two weeks after first report?-----If so, state estimated period of disability -----

(In this case the employer is expected to keep a record from which report of ultimate extent of disability can be furnished when requested.)

Dependents—

In case injury caused death or permanent total disability as shown above, give name, address, age and relationship of each person dependent on injured person's earnings:

Name -----Address -----Age -----

Relationship -----Date -----Report made out by-----

Whose position with-----

(Name of employer.)

Is -----

(Owner, superintendent or who.)

<sup>2</sup> Report on disability. Part II, to be sent in at the end of two weeks.

## CHAPTER XVIII.

### THE MASSACHUSETTS WORKMEN'S COMPENSATION ACT.

- |   |   |
|---|---|
| <p>Sec.</p> <p>302. Nature and scope of the Massachusetts workmen's compensation act.</p> <p>303. Text of the Massachusetts compensation act.</p> <p>304. Text of an act to authorize certain mutual insurance companies to transact the business of employers' liability insurance, so-called.</p> <p>305. Text of an act relative to the insurance of compensation to employés for personal injuries received in the course of their employment.</p> <p>306. Text of an act to authorize certain advances from the treasury of the commonwealth to the Massachusetts employés' insurance association.</p> <p>√ 307. Opinion of the supreme judicial court sustaining constitutionality of compensation act.</p> <p>308. Rules of Industrial Accident Board.</p> <p>309. Formal procedure—List of forms.</p> <p>310. Form of notice to employés. (a)</p> <p>311. Form of notice of claim of common-law rights. (b)</p> <p>312. Form of notice of waiver or rights under common law previously claimed. (c)</p> | <p>Sec.</p> <p>313. Form of agreement for redeeming liability by payment of lump sum. (d)</p> <p>314. Form of notice that an employer has ceased to be a subscriber. (e)</p> <p>315. Form of notice to industrial accident board that an injured employé has refused to submit himself to an examination. (f)</p> <p>316. Form of notice to employé from industrial accident board relative to his refusal to submit himself to an examination. (g)</p> <p>317. Form of agreement in regard to compensation. (h)</p> <p>318. Form of claim for compensation for injury. (i)</p> <p>319. Form of notice of injury. (j)</p> <p>319. Form of notice of injury. (j)</p> <p>320. Form of report of committee on arbitration. (k)</p> <p>321. Form of application for review of claim before full board. (l)</p> <p>322. Form of notice assessing cost of proceedings before arbitration committee upon party prosecuting or defending same without reasonable grounds. (m)</p> <p>323. Form of receipt on account of compensation. (n)</p> <p>324. Form of settlement receipt. (o)</p> |
|---|---|

**§ 302. Nature and scope of the Massachusetts workmen's compensation act.**—The Massachusetts act affects directly or indirectly all employés, except domestic servants and farm laborers. Employers who do not insure under the act, but elect to remain under the common law are deprived of the defenses of contributory negligence, negligence of fellow servant and assumption of risk by the employé. The act allows the employer to protect himself by becoming a subscriber to the Massachusetts Employés Insurance Association, or by insuring the liability to pay the compensation in a company, authorized to do liability insurance business in Massachusetts.

The employé is deprived of all compensation where the injury is caused by his own "serious and wilful misconduct." The amount of the compensation is doubled where the injury is due to the "serious and wilful misconduct of his employer," or "of any person regularly entrusted with and exercising the power of superintendence."

An employé of a subscriber may elect to sue at law by giving his employer notice in writing at the time of his contract of hire, that he claims such right, or if the contract of hire is made before the employer becomes a subscriber, then the employé must give the notice within thirty days of the notice of such subscription.

The act requires all employers to keep a record of injuries received by employés in the course of their employment, and report the same in detail within forty-eight hours of their occurrence under penalty of a fine of \$50 for each failure to do so.

The act provides in considerable detail for the establishment of an industrial accident board, which is given general supervision over all parties affected and this board is clothed with quasi-judicial powers.



**§ 303. Text of the Massachusetts compensation act.**

—The act is divided into five parts and is as follows:

**PART I—MODIFICATION OF REMEDIES.**

Sec. 1. In an action to recover damages for personal injury sustained by an employé in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employé was negligent;
2. That the injury was caused by the negligence of a fellow employé;
3. That the employé had assumed the risk of the injury.

Sec. 2. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers.

Sec. 3. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by employés of a subscriber.

Sec. 4. The provisions of sections one hundred and twenty-seven to one hundred and thirty-five, inclusive, and of one hundred and forty-one to one hundred and forty-three, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, and of any acts in amendment thereof, shall not apply to employés of a subscriber while this act is in effect.

Sec. 5. An employé of a subscriber shall be held to have waived his right of action at common law to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed such right, or if the contract of hire was made before the employer became a subscriber, if the employé shall not have given the said notice within thirty days of notice of such subscription. An employé who has given notice to his employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take

effect five days after it is delivered to the employer or his agent. (See Ch. 666 Mass. Acts of 1912.)

#### PART II—PAYMENTS.

Sec. 1. If an employé, who has not given notice of his claim of common law rights of action, as provided in Part I, section five, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, he shall be paid compensation by the association, as hereinafter provided, if his employer is a subscriber at the time of the injury.

Sec. 2. If the employé is injured by reason of his serious and wilful misconduct, he shall not receive compensation.

Sec. 3. (As amended by Section 1 of Ch. 571, Acts of 1912). If the employé is insured by reason of the serious and wilful misconduct of a subscriber or of any person regularly entrusted with and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled. In such case the subscriber shall repay to the association the extra compensation paid to the employé. If a claim is made under this section, the subscriber shall be allowed to appear and defend against such claim only.

Sec. 4. No compensation shall be paid under this act for any injury which does not incapacitate the employé for a period of at least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

Sec. 5. During the first two weeks after the injury, the association shall furnish reasonable medical and hospital services, and medicines when they are needed.

Sec. 6. If death results from the injury, the association shall pay the dependents of the employé, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one-half his aver-

age weekly wages, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury. If the employé leaves dependents only partly dependent upon his earnings for support at the time of his injury, the association shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employé to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employé before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury.

Sec. 7. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:—

(a) A wife upon a husband with whom she lives at the time of his death.

(b) A husband upon a wife with whom he lives at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one

wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

Sec. 8. If the employé leaves no dependents, the association shall pay the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

Sec. 9. While the incapacity for work resulting from the injury is total, the association shall pay the injured employé a weekly compensation equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor the amount more than three thousand dollars.

Sec. 10. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employé a weekly compensation equal to one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

Sec. 11. (As amended by Section 2, Ch. 571, Acts of 1912). In case of the following specified injuries the amounts hereinafter named shall be paid in addition to all other compensation:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the reduction to one-tenth of normal vision in both eyes with glasses, one-half of the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.

(b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or

the reduction to one-tenth of normal vision in either eye with glasses, one-half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one-half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, one-half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

Sec. 12. No savings or insurance of the injured employé, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the association be considered in fixing the compensation under this act.

Sec. 13. The compensation payable under this act in case of the death of the injured employé shall be paid to his legal representative; or, if he has no legal representative, to his dependents; or, if he leaves no dependents, to the persons to whom payment of the expenses for the last sickness and burial is due. If the payment is made to the legal representative of the deceased employé, it shall be paid by him to the dependents or other persons entitled thereto under this act.

Sec. 14. If an injured employé is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

Sec. 15. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the association or

subscriber as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employé, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

Sec. 16. (As amended by Chapter 172, Acts of 1912, and Section 3 of Chapter 571, Acts of 1912). The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury, and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf. Any form of written communication signed by any person who may give the notice as above provided, which contains the information that the person has been so injured, giving the time, place and cause of the injury, shall be considered a sufficient notice.

Sec. 17. The notice shall be served upon the association, or an officer or agent thereof, or upon the subscriber, or upon one subscriber, if there are more subscribers than one, or upon any officer or agent of a corporation if the subscriber is a corporation, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

Sec. 18. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead and the association was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber, or agent had knowledge of the injury.

Sec. 19. (As amended by section 4 of chapter 571, Acts of 1912). After an employé has received an injury, and from time to time thereafter during the continuance of his disability he shall, if so requested by the association or subscriber, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the commonwealth, furnished and paid for by the association or subscriber. The employé shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited.

Sec. 20. No agreement by an employé to waive his rights to compensation under this act shall be valid.

Sec. 21. No payment under this act shall be assignable or subject to attachment, or be liable in any way for any debts.

Sec. 22. Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the industrial accident board.

Sec. 23. (As amended by section 5 of chapter 571, Acts of 1912). The claim for compensation shall be in writing and shall state the time, place, cause and nature of the injury; it shall be signed by the person injured or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf, and shall be filed with the industrial accident board. The failure to make a claim within the period prescribed by section fifteen shall not be a bar to the maintenance of proceedings under this act if it is found that it was occasioned by mistake or other reasonable cause.

## PART III—PROCEDURE.

Sec. 1. (As amended by section 6 of chapter 571, Acts of 1912). There shall be an industrial accident board consisting of five members, to be appointed by the governor, by and with the advice and consent of the council, one of whom shall be designated by the governor as chairman. The term of office of members of this board shall be five years, except that when first constituted one member shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed every year for the full term of five years.

Sec. 2. (As amended by section 7 of chapter 571, Acts of 1912). The salaries and expenses of the board shall be paid by the commonwealth. The salary of the chairman shall be five thousand dollars a year, and the salary of the other members shall be forty-five hundred (\$4,500) dollars a year each. The board may appoint a secretary at a salary of not more than three thousand dollars a year and may remove him. It shall also be allowed an annual sum, not exceeding ten thousand dollars, for clerical service, and travelling and other necessary expenses. The board shall be provided with an office in the state house or in some other suitable building in the city of Boston, in which its records shall be kept.

Sec. 3. (As amended by section 8 of chapter 571, Acts of 1912). The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The board or any member thereof shall have the power to subpoena witnesses, administer oaths, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. The fees for attending as a witness before the industrial accident board shall be one dollar and fifty cents a day, for attending before an arbitration



committee fifty cents a day; in both cases five cents a mile for travel out and home.

The superior court shall have power to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records.

Sec. 4. (As amended by section 9 of chapter 571, Acts of 1912). If the association and the injured employé reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the industrial accident board and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of Part III, section eleven. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

Sec. 5. (As amended by section 10 of chapter 571, Acts of 1912). If the association and the injured employé fail to reach an agreement in regard to compensation under this act, either party may notify the industrial accident board who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member of the industrial accident board and shall act as chairman. The other two members shall be named, respectively, by the two parties. If the subscriber has appeared under the provisions of Part II, Section 3, the member named by the association shall be subject to his approval. If a vacancy occurs it shall be filled by the party whose representative is unable to act.

The arbitrators appointed by the parties shall be sworn by the chairman as follows: I, ..... do solemnly swear that I will faithfully perform my duty as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party. So help me God.

Sec. 6. (As amended by section 11, chapter 571,

Acts of 1912). It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The board shall designate one of its members to act as chairman, and, if either party does not appoint its member on this committee within seven days after notification, as above provided, or after a vacancy has occurred, the board or any member thereof shall fill the vacancy and notify the parties to that effect.

Sec. 7. (As amended by section 12 of chapter 571, Acts of 1912). The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be held in the city or town where the injury occurred, and the decision of the committee together with a statement of the evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within seven days, the decision shall be enforceable under the provisions of Part III, section eleven.

Sec. 8. The industrial accident board or any member thereof may appoint a duly qualified impartial physician to examine the injured employé and to report. The fee for this service shall be five dollars and travelling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

Sec. 9. The arbitrators named by or for the parties to the dispute shall each receive five dollars as a fee for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the association, which shall deduct an amount equal to one-third of the sum from any compensation found due the employé.

Sec. 10. (As amended by section 13 of chapter 571, Acts of 1912). If a claim for a review is filed, as provided

in Part III, section seven, the board shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

Sec. 11. (As amended by section 14 of chapter 571, Acts of 1912). Any party in interest may present certified copies of an order or decision of the board, a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the board, and all papers in connection therewith, to the superior court for the county in which the injury occurred or for the county of Suffolk, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact, or where the decree is based upon a decision of an arbitration committee or a memorandum of agreement, and that there shall be no appeal from a decree based upon an order or decision of the board which has not been presented to the court within ten days after the notice of the filing thereof by the board. Upon the presentation to it of a certified copy of a decision of the industrial accident board ending, diminishing or increasing a weekly payment under the provisions of Part III, section twelve, the court shall revoke or modify the decree to conform to such decision.

Sec. 12. Any weekly payment under this act may be reviewed by the industrial accident board at the re-

quest of the association or of the employé; and on such review it may be ended, diminished or increased, subject to the maximum and minimum amounts above provided, if the board finds that the condition of the employé warrants such action.

Sec. 13. Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial accident board.

Sec. 14. If the committee of arbitration, industrial accident board, or any court before whom any proceedings are brought under this act determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it shall assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

Sec. 15. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employé may at his option proceed either at law against that person to recover damages, or against the association for compensation under this act, but not against both; and if compensation be paid under this act, the association may enforce in the name of the employé, or in its own name and for its own benefit, the liability of such other person.

Sec. 16. (As amended by section 15 of chapter 571, Acts of 1912). All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board. The decisions of the industrial accident board shall for all purposes be enforceable under the provisions of Part III, section eleven.

Sec. 17. If a subscriber enters into a contract, written or oral, with an independent contractor to do such subscriber's work, or if such a contractor enters into

a contract with a subcontractor to do all or any part of the work comprised in such contract with the subscriber, and the association would, if such work were executed by employés immediately employed by the subscriber, be liable to pay compensation under this act to those employés, the association shall pay to such employés any compensation which would be payable to them under this act if the independent or subcontractors were subscribers. The association, however, shall be entitled to recover indemnity from any other person who would have been liable to such employés independently of this section, and if the association has paid compensation under the terms of this section, it may enforce in the name of the employé, or in its own name and for the benefit of the association, the liability of such other person. This section shall not apply to any contract of an independent or subcontractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by the subscriber, nor to any case where the injury occurred elsewhere than on, in, or about the premises on which the contractor has undertaken to execute the work for the subscriber or which are under the control or management of the subscriber.

Sec. 18. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employés in the course of their employment. Within forty-eight hours, not counting Sundays and legal holidays, after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for the purpose.

Upon the termination of the disability of the injured employé or, if such disability extends beyond a period of sixty days, at the expiration of such period, the employer shall make a supplemental report on blanks to be procured from the board for that purpose.

The said reports shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employé, and shall state the date and hour of the accident, the nature and cause of the injury, and such other information as may be required by the board.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offense.

#### PART IV—THE MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION.<sup>1</sup>

Sec. 1. The Massachusetts Employés Insurance Association is hereby created a body corporate with the powers provided in this act and with all the general corporate powers incident thereto.

Sec. 2. The governor shall appoint a board of directors of the association, consisting of fifteen members, who shall serve for a term of one year, or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide.

Sec. 3. Until the first meeting of the subscribers the board of directors shall have and exercise all the powers of the subscribers, and may adopt by-laws not inconsistent with the provisions of this act, which shall be in effect until amended or repealed by the subscribers.

Sec. 4. The board of directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall provide.

Sec. 5. Seven or more of the directors shall constitute a quorum for the transaction of business.

Vacancies in any office may be filled in such manner as the by-laws shall provide.

Sec. 6. Any employer in the commonwealth may become a subscriber.

<sup>1</sup>See chapter 721, Acts of 1912.

Sec. 7. The board of directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his place of business not less than ten days before the date fixed for the meeting.

Sec. 8. In any meeting of the subscribers each subscriber shall be entitled to one vote, and if a subscriber has five hundred employés to whom the association is bound to pay compensation he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional five hundred employés to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by the right of proxy, more than twenty votes.

Sec. 9. No policy shall be issued by the association until not less than one hundred employers have subscribed, who have not less than ten thousand employés to whom the association may be bound to pay compensation.

Sec. 10. No policy shall be issued until a list of the subscribers, with the number of employés of each, together with such other information as the insurance commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him within thirty days of the granting of a license to the association by the insurance commissioner to issue policies.

Sec. 11. If the number of subscribers falls below one hundred, or the number of employés to whom the association may be bound to pay compensation falls below ten thousand, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than one

hundred who have not less than ten thousand employés, said subscriptions to be subject to the provisions contained in the preceding section.

Sec. 12. Upon the filing of the certificate provided for in the two preceding sections the insurance commissioner shall make such investigation as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies.

Sec. 13. The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury.

Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.

Sec. 14. The association may in its by-laws and policies fix the contingent mutual liability of the subscribers for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium.

Sec. 15. If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability.

Every subscriber shall pay his proportional part of any assessments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

Sec. 16. The board of directors may, from time to time, by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensa-



tion which may be payable on account of injuries sustained and expenses incurred.

All premiums, assessments, and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

Sec. 17. Any proposed premium, assessment, dividend or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by the insurance commissioner after such investigation as he may deem necessary. (See chapter 666, Acts of 1912).

Sec. 18. The board of directors shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of subscribers, and for this purpose the inspectors of the association shall have free access to all such premises during regular working hours.

Any subscriber or employé aggrieved by any such rule or regulation may petition the industrial accident board for a review, and it may affirm, amend, or annul the rule or regulation.

Sec. 19. If any officer of the association shall falsely make oath to any certificate required to be filed with the insurance commissioner, he shall be guilty of perjury.

Sec. 20. Every subscriber shall, as soon as he secures a policy, give notice in writing or print, to all persons under contract of hire with him that he has provided for payment to injured employés by the association.

Sec. 21. (As amended by section 16 of chapter 571, Acts of 1912). Every subscriber shall give notice in writing or print to every person with whom he is about to enter into a contract of hire that he has provided for

payment to injured employes by the association. If an employer ceases to be a subscriber he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract with him. In case of the renewal of the policy no notice shall be required under the provisions of this act. He shall file a copy of said notice with the industrial accident board. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the industrial accident board.

Sec. 22. If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court of law to pay to an employe any damages on account of personal injury sustained by such employe during the period of such subscription, the association shall pay to the subscriber the full amount of such judgment and the cost assessed therewith, if the subscriber shall have given the association notice in writing of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend the same.

Sec. 23. The provisions of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven and of acts in amendment thereof shall apply to the association, so far as such provisions are pertinent and not in conflict with the provisions of this act, except that the corporate powers shall not expire because of failure to issue policies or make insurance.

Sec. 24. The board of directors appointed by the governor under the provisions of Part IV, section two, may incur such expenses in the performance of its duties as shall be approved by the governor and council. Such expenses shall be paid from the treasury of the commonwealth and shall not exceed in amount the sum of fifteen thousand dollars.

## PART V—MISCELLANEOUS PROVISIONS.

Section 1. If an employé of a subscriber files any claim with or accepts any payment from the association on account of personal injury, or makes any agreement, or submits any question to arbitration, under this act, such action shall constitute a release to the subscriber of all claims or demands at law, if any, arising from the injury.

Sec. 2. The following words and phrases, as used in this act, shall, unless a different meaning is plainly required by the context, have the following meaning:—

“Employer” shall include the legal representative of a deceased employer.

“Employé” shall include every person in the service of another under any contract of hire, express or implied, oral or written, except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer. Any reference to an employé who has been injured shall, when the employé is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

“Dependents” shall mean members of the employé’s family or next of kin who were wholly or partly dependent upon the earnings of the employé for support at the time of the injury.

“Average weekly wages” shall mean the earnings of the injured employé during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employé lost more than two weeks’ time during such period then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted. Where, by reason of the shortness of the time during which the employé has been in the employment of his employer, or

the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer; or, if there is no person so employed by a person in the same grade employed in the same class of employment and in the same district.

"Association" shall mean the Massachusetts Employés Insurance Association.

"Subscriber" shall mean an employer who has become a member of the association by paying a year's premium in advance and receiving the receipt of the association therefor, provided that the association holds a license issued by the insurance commissioner as provided in Part IV, section twelve.

Sec. 3. (As amended by section 17 of chapter 571, Acts of 1912). Any liability insurance company authorized to do business within this commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by Part II of this act, and when such liability company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable within the meaning of this act, and when any such company insures such payment of compensation it shall be subject to the provisions of Parts I, II, III and V and of section twenty-two of Part IV of this act, and shall file with the insurance department its classifications of risks and premiums relating thereto and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply.

Sec. 4. (As amended by section 18 of chapter 571, Acts of 1912). Sections one hundred and thirty-six to

one hundred and thirty-nine, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine are hereby repealed.

Sec. 5. The provisions of this act shall not apply to injuries sustained prior to the taking effect thereof.

Sec. 6. (As amended by section 19 of chapter 571, Acts of 1912). Part IV of this act shall take effect on the first day of January, nineteen hundred and twelve; sections one to three, inclusive, of Part III shall take effect on the tenth day of May, nineteen hundred and twelve; the remainder thereof shall take effect on the first day of July, nineteen hundred and twelve.

**§ 304. Text of act to authorize certain mutual insurance companies to transact the business of employers' liability insurance, so-called.**—This act, which became effective March 22, 1912, provides:

Sec. 1. Section one of chapter two hundred and fifty-one of the acts of the year nineteen hundred and eleven is hereby amended by adding at the end thereof the words:—Mutual companies doing business and organized prior to April sixth, nineteen hundred and eleven, to transact employers' liability business may have and exercise all the rights and powers conferred by this section upon companies which may be organized hereunder, but such rights and powers shall not be exercised unless authorized by a two-thirds vote of the policyholders present and voting at a meeting duly called for that purpose,—so as to read as follows:—  
Section 1. Ten or more persons who are residents of this commonwealth may form an insurance company on the mutual plan to insure any person, firm or corporation against loss or damage on account of the bodily injury or death by accident of any person, or against damage caused by automobiles to property of another, for which loss or damage such person, firm or corporation is responsible. The corporation shall be formed in

the manner described in, and be subject to, the provisions of sections fifteen to twenty, inclusive, of chapter one hundred and ten of the Revised Laws, except as is otherwise provided herein. Mutual companies doing business and organized prior to April sixth, nineteen hundred and eleven, to transact employers' liability business may have and exercise all the rights and powers conferred by this section upon companies which may be organized hereunder, but such rights and powers shall not be exercised unless authorized by a two-thirds vote of the policyholders present and voting at a meeting duly called for that purpose. (Chapter 311, Acts of 1912.)

§ 305. Text of act relative to the insurance of compensation to employés for personal injuries received in the course of their employment.—This act, which became operative May 28, 1912, provides:

Sec. 1. The insurance commissioner may withdraw his approval of any premium or distribution of subscribers given by him to the Massachusetts Employés Insurance Association under the provisions of section seventeen of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, or of any premium or rate made by an insurance company and approved by him under the provisions of section three of Part V of said chapter seven hundred and fifty-one as amended by section seventeen of chapter five hundred and seventy-one of the acts of the year nineteen hundred and twelve.

Sec. 2. The notices required by section five of Part I of said chapter seven hundred and fifty-one shall be given in such manner as the industrial accident board may approve. (Chapter 666, Acts of 1912.)

§ 306. Text of act to authorize certain advances from the treasury of the commonwealth to the Massa-

**chusetts employés insurance association.**—This act, which became operative June 6, 1912, provides:

Sec. 1. For the purpose of enabling the Massachusetts Employés Insurance Association to carry out the provisions of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, the treasurer and receiver general, from time to time, within one year after the date of the passage of this act, may advance to the said association from the treasury of the commonwealth sums of money not exceeding in the aggregate one hundred thousand dollars. For the moneys so advanced the association shall execute and deliver to the treasurer its promissory notes payable to the order of the commonwealth within four years after the respective dates thereof, with interest at the rate of four per cent. per annum, payable semi-annually. The notes shall be signed by the treasurer of said association and countersigned by its president, and shall be payable either serially or by installments, so that at least one-fourth of the aggregate indebtedness shall be paid in each calendar year, beginning with the first day of January, nineteen hundred and thirteen.

Sec. 2. The treasurer and receiver general is hereby authorized to borrow upon the credit of the commonwealth, from time to time, such amounts as may be necessary to cover the advances authorized in section one of this act. All money so borrowed shall be deposited in the state treasury, and the treasurer and receiver general shall pay out the same as ordered by said association, and shall keep a separate and accurate account of all sums so borrowed and advanced.

Sec. 3. The provisions of Part IV of said chapter seven hundred and fifty-one in regard to assessments to provide for the payment of losses and expenses shall also apply to and authorize assessments, so far as they may be necessary, for the payment of said notes and of the interest thereon.

Sec. 4. Notes issued under the provisions of this act shall not be considered as rendering the association deficient in funds, so long as the liability of subscribers to assessment exceeds the amount of said notes less the proceeds of said notes still in the hands of the association. (Chapter 721, Acts of 1912.)

**§ 307. Opinion of the supreme judicial court sustaining constitutionality of compensation act.**—The question of the constitutionality of the Massachusetts act was submitted to the supreme judicial court under the following resolution of the senate:

Whereas, There is now before the Senate a bill entitled "An Act relative to payments to employés for personal injuries received in the course of their employment and to the prevention of such injuries," being House Document No. 2154; and

Whereas, No similar legislation has ever been enacted in this commonwealth; and

Whereas, An act for a similar purpose was enacted in the State of New York, and has been decided to be in violation of the constitution of the State of New York and of the Fourteenth Amendment to the Constitution of the United States; and

Whereas, There appears to be no precedent bearing on said subject in other jurisdictions in the United States;

Be it ordered, That the opinion of the Justices of the Supreme Judicial Court be required on the following important questions of law:—

First. Is the said bill, House Document No. 2154, in conformity with the provisions of the constitution of the commonwealth of Massachusetts which requires that property shall not be taken from a citizen without due process of law?

Second. Is the bill in conformity with the fourteenth amendment to the Federal Constitution?



On July 24, 1911, the Justices sent to the Senate their response<sup>1a</sup> in these words:

To the Honorable the Senate of the Commonwealth of Massachusetts:

We have received the questions, of which a copy with the act referred to therein and the amendment adopted by the Senate, is hereto annexed, and after giving to them such consideration as we have been able to give in the time at our disposal, we respectfully answer them as follows:

The questions submitted to us are important, and the proposed act involves a radical departure in the manner of dealing with actions or claims for damages for personal injuries received by employés in the course of their employment from that which has heretofore prevailed in this commonwealth; but we think that nothing would be gained by an extended discussion and we therefore content ourselves with stating briefly the conclusions to which we have come and our reasons therefor.

The first section of the act (Part I, § 1) provides that "In an action to recover damages for personal injury sustained by an employé in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employé was negligent;
2. That the injury was caused by the negligence of a fellow employé;
3. That the employé had assumed the risk of the injury."

This section deals with actions at common law. We construe clauses 1 and 2 in their reference to negligence as meaning contributory negligence or negligence on the part of a fellow servant which falls short of the serious and wilful misconduct which under Part II, § 2,

<sup>1a</sup>In re Opinion of Justices, 209 Mass. 607, 96 N. E. 308.

will deprive an employé of compensation. So construed we think that the section is constitutional. We neither express nor intimate any opinion whether it would be unconstitutional if otherwise construed. The rules of law relating to contributory negligence and assumption of the risk and the effect of negligence by a fellow servant were established by the courts, not by the Constitution, and the Legislature may change them or do away with them altogether as defenses (as it has to some extent in the employer's liability act) as in its wisdom in the exercise of powers intrusted to it by the Constitution it deems will be best for the "good and welfare of this Commonwealth." See *Missouri Pacific Railway v. Mackey*, 127 U. S. 205, 8 Sup. Ct. 1161, 32 L. ed. 107; *Minnesota Iron Co. v. Kline*, 199 U. S. 593, 50 L. ed. 322, 26 Sup. Ct. 159. The act expressly provides that it shall not apply to injuries sustained before it takes effect. If, therefore, a right of action which has accrued under existing laws for personal injuries constitutes a vested right or interest, there is nothing in the section which interferes with such rights or interests. The effect of the section is not to authorize the taking of property without due process of law, as the Court of Appeals of New York held was the case with the statute referred to in the preamble to the questions submitted to us, and which in consequence thereof was declared by that court to be unconstitutional. *Ives v. South Buffalo Railway*, 201 N. Y. 271, 94 N. E. 431. Construing the section as we do and as we think that it should be construed, it seems to us that there is nothing in it which violates any rights secured by the State or Federal Constitutions. We see nothing unconstitutional in providing, as is done in Part I, § 2, that the provisions of § 1 shall not apply to domestic servants and farm laborers; nor in providing, as is done in Part I, § 5, that the employé shall be deemed to have waived his right of action at common law if he shall not have

given notice to his employer as therein provided. The effect of the provisions referred to is to leave it at the employé's option whether he will or will not waive his right of action at common law. See *Foster v. Morse*, 132 Mass. 354, 42 Am. Rep. 438.

The rest of the act deals mainly with a scheme for providing, through the instrumentality of a corporation established for that purpose entitled the Massachusetts Employés Insurance Association, and the subscription of employers thereto, for compensation to employés for personal injuries received by them in the course of their employment, and not due to serious and wilful misconduct on their part. There is nothing in the act which compels an employer to become a subscriber to the Association, or which compels an employé to waive his right of action at common law and accept the compensation provided for in the act. In this respect the act differs wholly so far as the employer is concerned from the New York statute above referred to. By subscribing to the Association an employer voluntarily agrees to be bound by the provisions of the act. The same is true of an employé who does not choose to stand upon his common law rights. An employer who does not subscribe to the Association will no longer have the right in an action by his employé against him at common law to set up the defense of contributory negligence or assumption of the risk, or to show that the injury was caused by the negligence of a fellow servant. In the case of an employé who does not accept the compensation provided for by the act and whose employer had become a subscriber to the Association, an action no longer can be maintained for death under the employer's liability act. But these considerations do not constitute legal compulsion or a deprivation of fundamental rights. We do not deem it necessary to take up and consider in detail the numerous provisions by which the right to compensation and the amount thereof and

the persons entitled thereto and the course of procedure to be followed and matters relating thereto are to be settled and determined. We assume, however, that the meaning of §§ 4 and 7 of Part III of the proposed act is that the approved agreement or decision therein mentioned is to be enforced by proper proceedings in court, and not by process to be issued by the industrial accident board itself. Taking in account the non-compulsory character of the proposed act, we see nothing in any of these provisions which is not "in conformity with" the fourteenth amendment to the Federal Constitution, or which infringes upon any provision of our own Constitution in regard to the taking of property "without due process of law." It is within the power of the Legislature to provide that no agreement by an employé to waive his rights to compensation under the act shall be valid. See *Missouri Pacific Railway v. Mackey*, 127 U. S. 205, 32 L. ed. 107, 8 Sup. Ct. 1161; *Minnesota Iron Co. v. Kline*, 199 U. S. 593, 50 L. ed. 322, 26 Sup. Ct. 159.

In regard to the amendment it is to be observed that no liability insurance company is obliged to insure, and that if it chooses to do so there is nothing unconstitutional in requiring that it and the policyholder shall be governed by the provisions of the act so far as applicable.

It should be noted perhaps in the interest of accuracy that there is no phrase in our Constitution which in terms requires that "property shall not be taken from a citizen without due process of law." The quoted words, which we take from the first question submitted to us, are a paraphrase of what is contained in the Constitution, but are not the language of the Constitution itself.

We have confined ourselves to the questions submitted to us, and we answer both of them in the affirmative.

Owing to their absence from the commonwealth, the Chief Justice and Mr. Justice Loring have taken no part in the consideration of the questions.

JAMES M. MORTON.

JOHN W. HAMMOND.

HENRY K. BRALEY.

HENRY N. SHELDON.

ARTHUR PRENTICE RUGG.

July 24, 1911.

**§ 308. Rules of Industrial Accident Board.**—The act provides for the creation of the Industrial Accident Board and invests it with the general supervision over all parties affected by the act and quasi judicial powers. This board under its authority to prescribe rules has promulgated the following rules for the administration of the law.

Rule 1. Manner of giving notice by employer of acceptance of the act.—If personal service is not made of the notices required by sections 20 and 21 of Part IV, chapter 751 of the Acts of 1911, and the amendments thereto, said notices may be given by posting the same at one or more of the principal entrances to the factory, shop or place of business of the employer, and in each room where labor is employed; said notices to be printed or typewritten.

Supplement to Rule 1.—It has been represented to the Industrial Accident Board that it is possible that employés may be engaged for labor away from the office or headquarters of the subscriber, or may be employed in more than one place or office, and that in these cases personal notice is not always possible or practical. To meet this situation the Board has passed the following supplement to Rule No. 1:—

Where the same employés are employed in more than one room in a building, or in various places, or where employers are engaged in such business as that

of managing office buildings, and personal service of the notices required by sections 20 and 21, Part IV, chapter 751 of the Acts of 1911, and amendments thereto, is not made, said notices can be served by posting the same at one or more of the principal entrances to each building so managed, or where labor is employed, or by posting the same in a conspicuous place near any time clock or other registering device which employes in any such building are required to use, or by posting the same at the entrance to the office of the janitor of said building, or by posting the same at the place where the employé is hired.

Rule 2. Manner of giving notice by employé to employer.—In each instance the notice shall be served upon the employer, or upon one employer if there are more employers than one, or upon any officer or agent of a corporation if the employer is a corporation, by delivering the same to the person on whom it is to be served, or by leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business. (Section 5, Part I, chapter 751, of the Acts of 1911, and amendments thereto.)

Rule 3. Report of accidents by association or insurance companies to the board.—That the association and liability insurance companies report to it all accidents within five days after receipt of notice thereof by them from any subscriber, by sending to the Industrial Accident Board a list or brief statement of the same.

Rule 4. Additional copy of employes claim for compensation to be sent to insurance association or company.—An employé making a claim for compensation under this act shall furnish the association or insurance company against whom said claim is made with a copy thereof by mail or otherwise forthwith, upon the filing of the same with the Industrial Accident Board. This

rule shall be without prejudice to any rights acquired by the filing of said claim with the Board under the provisions of Part II, section 23, chapter 751 of the Acts of 1911, and amendments thereto, or by other provisions of said act.

Rule 5. Insurance association and companies to notify industrial accident board of employers who insure or cease to insure.—That the Insurance association and all liability insurance companies shall notify the industrial accident board of the names and addresses of all employers who insure their liability under the workmen's compensation act, notice to be given forthwith upon the issuance of such insurance and a further notice to be given when employers cease to be so insured.

Rule 6. Agreements between the insurer and employé.—Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. (Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and rule adopted by the Board.)

The above paragraph of this rule shall be written or printed at the head of every agreement regarding compensation, and of every receipt taken by the insurer from the employé.

Rule 7. Employer to file notice of insurance with the board.—Every employer shall file with the Industrial Accident Board a copy of the form of notice, including the signature thereto, which he has given to his employés that he has insured under this act.

Rule 8. Employer to notify employés of change of insurer.—Every employer shall notify his employés of

any change of insurer by serving or posting a new "notice to employés," stating the name of the new insurance company or association insuring his liability under this act, and filing a copy of such notice with the Industrial Accident Board.

§ 309. **Formal procedure—List of forms.**—The Industrial Accident Board of Massachusetts, responding to the duties imposed upon it by the law has prescribed fifteen forms which are required to be used by employers, injured employés, insurance associations and liability insurance companies covered by the act, together with certain instructions which are designated as follows:

- (a) Notice to employés (by employer);
- (b) Notice of claim of common-law rights (by employé);
- (c) Notice of waiver of rights under common law previously claimed (by employé);
- (d) Agreement for redeeming liability by payment of lump sum (by employé and insurer);
- (e) Notice that an employer has ceased to be a subscriber (by employer);
- (f) Notice to industrial accident board that an injured employé has refused to submit himself to an examination (by insurance association of company);
- (g) Notice to employé from industrial accident board relative to his refusal to submit himself to an examination (by Industrial Accident Board);
- (h) Agreement in regard to compensation (by employé and insurer);
- (i) Claims for compensation for injury (by employé);
- (j) Notice of injury (by employé);
- (k) Report of committee on arbitration;
- (l) Application for review of claims before full board (by aggrieved party);



(m) Notice assessing cost of proceedings before arbitration committee upon party prosecuting or defending same without reasonable grounds (by employé and insurer);

(n) Receipt on account of compensation (by employé);

(o) Settlement receipt (by employé).

These forms are given in full in the succeeding pages in the foregoing order.

### § 310. Form of notice to employés (a):

As required by chapter 751, of the Acts of 1911, Commonwealth of Massachusetts, and amendments thereto, entitled "An Act relative to payment to employés for personal injuries received in the course of their employment, and to the prevention of such injuries."

This will give you notice that I (we) have provided for payment to our injured employés under the above act by insuring with the  
-----Insurance Co.  
-----

Insert address of company here.

Date -----

Name of employer.

Address -----

City or town.

Street and number.

### § 311. Form of notice of claim of common-law rights. (b)

-----191--  
To -----

Name of employer.

This is to notify you that I claim my right of action at common law to recover damages for personal injuries. This notice is given to you under the Acts of 1911, chapter 751, section 5, Part I, and amendments thereto.

-----  
Signature of employé.

Address -----

City or town, Street and No.

### § 312. Form of notice of waiver of rights under common law previously claimed. (c)

-----191--  
To -----Employer.

This is to notify you that I waive my rights under the common law previously claimed by former notice, and now claim my rights

under the workmen's compensation act. This notice is given to you under the Acts of 1911, chapter 751, section 5, Part I, and amendments thereto.

-----  
Signature of employé.

**§ 313. Form of agreement for redeeming liability by payment of lump sum. (d)<sup>2</sup>**

Received of -----

Name of insurer.

the lump sum of ----- dollars  
and ----- cents, making in all, with weekly  
payments already received by me, the total sum of -----  
dollars and ----- cents, a weekly  
payment having been continued for not less than six months. Said  
payments are received in redemption of the liability for all weekly  
payments now or in the future due me under the Massachusetts  
Workmen's Compensation Act, for all injuries received by me on  
or about the ----- day of -----, 191-----, while  
in the employ of -----, subject to

Name of employer and address.

the approval of the Industrial Accident Board.

Witness my hand this ----- day of -----, 191-----

Witness -----

Name.

Name of employé.

Address -----

City or town.

City or town.

-----  
Street and number.

-----  
Street and number.

**§ 314. Form of notice that an employer has ceased to be a subscriber. (e)**

Section 21, Part IV, chapter 751, Acts of 1911, as amended by section 16, chapter 571, Acts of 1912, provides that when an employer ceases to be a subscriber, he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract of hire with him, and he shall file a copy of said notice with the Industrial Accident Board. In case of the renewal of the policy, no notice is required. Following is the form:

**Notice.**

This is to give you notice that I (we) have ceased to be a subscriber in any insurance company, under chapter 751, Acts of 1911,

<sup>2</sup> Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the Industrial Accident Board. (Section 22, Part II, chapter 751, Acts of 1911, and amendments thereto.)

and amendments thereto, and that the policy formerly held by me expired \_\_\_\_\_ or is to expire \_\_\_\_\_

\_\_\_\_\_  
Name of employer.

\_\_\_\_\_  
Address,

\_\_\_\_\_  
City or town, street and No.

§ 315. Form of notice to industrial accident board that an injured employé has refused to submit himself to an examination. (f)

You are hereby notified that \_\_\_\_\_

\_\_\_\_\_  
Name of employé.

\_\_\_\_\_  
Street and No.

\_\_\_\_\_  
City or town.

who was injured on or about \_\_\_\_\_ while in the employ of \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
at

\_\_\_\_\_  
Name of employer.

\_\_\_\_\_  
Place.

has refused to submit himself to an examination, as required under the provisions of section 19, Part II, chapter 751 of the Acts of 1911, and amendments thereto.

\_\_\_\_\_  
Name of insurance association or company.

Per \_\_\_\_\_

\_\_\_\_\_  
191

\_\_\_\_\_  
City.

§ 316. Form of notice to employé from industrial accident board relative to his refusal to submit himself to an examination. (g)

To \_\_\_\_\_

\_\_\_\_\_  
Street and No.

\_\_\_\_\_  
City or town.

The \_\_\_\_\_

\_\_\_\_\_  
Name of insurance company.

has notified the Industrial Accident Board, under date of \_\_\_\_\_ 191\_\_\_\_, that you have refused to submit yourself for examination, as required by section 19, Part II, chapter 751, Acts of 1911, and amendments thereto. Your attention is called to the terms of the act which provides—

“After employé has received an injury, and from time to time thereafter \_\_\_he shall\_\_\_\_\_ submit himself to an examination by a physician or surgeon\_\_\_\_\_furnished and paid for by the association or subscriber. The employé shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way ob-

structs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited."

INDUSTRIAL ACCIDENT BOARD,

By-----

§ 317. Form of agreement in regard to compensation. (h)<sup>3</sup>

-----, Employé

-----, Insurer.

We, -----, residing at-----

Name of injured employé.

city or town of-----and the

-----  
Name and address of insurance association or company.

have reached an agreement in regard to compensation for the injury sustained by said employé while in the employ of-----

-----  
Here insert name and address of employer.

Here insert the time, including hour and date of accident, the place where it occurred, the nature and cause of injury, and other cause or ground of claim.

The terms of the agreement follow:

(Here state the sum per week agreed upon subject to the terms of the Act.)

-----  
Witness.

-----  
Name of injured employé

-----  
Name of insurance association or company.

§ 318. Form of claim for compensation for injury. (i)<sup>4</sup>

This is to notify you-----

(Name of association or company with  
which employer is insured.)

that I claim compensation from you under the workmen's compen-

<sup>3</sup> Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. (Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and Rule No. 6 adopted by the Board.)

<sup>4</sup> This claim is to be filed with the Industrial Accident Board and may be sent by mail; at the time of filing, a copy thereof should also be sent by the employé to the insurance association or company. The claim should be made within six months after the occurrence of the injury. (Chapter 751, Part II, section 15, and section 23, as amended by Acts of 1912, chapter 571, section 5.)

sation act, chapter 751, Acts of 1911, and amendments thereto, for personal injury sustained while in the employ of-----

-----, of -----

Name of employer

Street and number.

-----The time of my injury was-----

City or town.

-----  
Here state date and time of day as near as possible.

The place of injury was-----

-----  
State name or description of building, or place, where injury was sustained.

The cause<sup>5</sup> of my injury was-----

Describe cause of injury.

The nature of my injury is as follows:-----

-----  
Describe injury with such exactness as possible.

-----  
Signature of injured employé.

-----  
Street and number.

-----  
City or town.

-----  
Date of making this claim.

Name of association or company with which employer is insured.

### § 319. Form of notice of injury. (j)<sup>6</sup>

This is to notify you-----

Name of employer, or insurance association or company.  
that on the-----day of-----, 191\_\_\_\_, at about\_\_\_\_o'clock,

<sup>5</sup> If it is claimed that the injury was caused by the serious and willful misconduct of the employer, or of any person regularly entrusted or exercising the powers of superintendent, it is requested that it be stated in this claim for compensation, setting forth in the alleged cause, in general terms, in what the serious and willful misconduct of the employer or superintendent consisted.

Section 14 of Part III of this act provides that if any proceedings are brought, prosecuted or defended under this act without reasonable ground, the whole cost of the proceedings shall be assessed upon the party who has so brought, prosecuted or defended them.

<sup>6</sup> Under sections 15, 16 and 17, Part II, chapter 751, Acts of 1911, and amendments thereto, notice of the time, place and cause of the injury must be given to the employer or the association or the liability insurance company, as soon as practicable after the happening thereof. The following is a form of the notice to be given under the above sections.

a. m. or p. m.-----, I received personal injury while in your employ in the city (town) of-----in the-----

Name or description of building or place of employment, and that the accident was caused to me by reason of-----

Describe cause of injury.

-----  
Name of employé.

-----  
City or town.

Address-----

Street and number.

**§ 320. Form of report of committee on arbitration. (k)**

-----, Employé.  
-----, Insurer.

The arbitration committee appointed under the provisions of section 7, Part III, chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of-----

v. -----  
being case No. -----on the files of the Industrial Accident Board, report as follows—

(Here will follow report.)

**§ 321. Form of application for review of claim before full board. (l)<sup>7</sup>**

To the Industrial Accident Board, Boston, Mass.

The undersigned, as provided in Part III, section 7, chapter 751 of the Acts of 1911, and amendments thereto, makes application for a review of the findings of the Committee on Arbitration in the claim of-----

----- v. -----

This claim for a review is based on the following grounds—

-----  
-----191--

**§ 322. Form of notice assessing cost of proceedings before arbitration committee upon party prosecuting or defending same without reasonable grounds. (m)**

-----, Employé.  
-----, Insurer.

To -----

You are hereby notified that the proceedings before the-----

<sup>7</sup> "No party shall as a matter or right be entitled to a second hearing on any matter of fact."

Industrial Accident Board, or Arbitration Committee, as case may be. on the above-entitled claim, have been determined by said Committee, or Board, to have been-----by you without reasonable

Prosecuted or defended.

grounds, and that the costs, amounting to \$-----, are assessed against you.

Respectfully,

INDUSTRIAL ACCIDENT BOARD,  
or ARBITRATION COMMITTEE.

By-----

### § 323. Form of receipt on account of compensation. (n)

Received of-----

Name of insurance association or company.

the sum of-----dollars,  
and-----cents, being the proportion of my weekly wages for  
the period from the-----day of-----, 191---, to the-----  
day of-----, 191---, under the Massachusetts Workmen's Com-  
pensation Act, subject to review by the Industrial Accident Board.<sup>8</sup>  
\$-----

-----  
Witness

-----  
Employé.

-----  
Street and number.

-----  
Street and number

-----  
City or town.

-----  
City or town.

### § 324. Form of settlement receipt. (o)<sup>9</sup>

Received of-----

Name of insured. /

the sum of-----dollars  
and-----cents, making in all, with weekly payments already  
received by me, the total sum of-----dollars  
and-----cents, in settlement of compensation under the  
Massachusetts Workmen's Compensation Act, for all injuries re-

<sup>8</sup> Every agreement in regard to compensation is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and rule adopted by the Board.

<sup>9</sup> Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memo-

ceived by me on or about the-----day of-----, 191\_\_\_\_,  
while in the employ of-----

-----  
Name of employer, city or town, street and number.  
subject to approval and review by the Industrial Accident Board.

Witness my hand this-----day of-----, 191\_\_\_\_

Witness -----

Name.

Name of employé.

Address -----

Street and number.

Street and number.

-----  
City or town.

-----  
City or town.

-----  
randum of the same must be filed with the Board, whether said  
agreement is written or oral, and whether it is made by one or both  
parties, or in the form of a receipt. Any weekly payment or settle-  
ment under the act, whether purporting to be final or otherwise,  
may be reviewed by the Board. (Section 20, Part II, and sections  
4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments  
thereto, and Rule No. 6 adopted by the board.)



## CHAPTER XIX.

### THE ILLINOIS WORKMEN'S COMPENSATION ACT.

- | Sec.   | Sec.   |
|--|--|
| 325. Nature and scope of the act.  | 335. Form of notice to employer of accident causing employé's death. (g)   |
| 326. Text of Illinois Workmen's Compensation law.  | 336. Form of notice of intention to file a petition asking for the payment of a lump sum by way of compensation. (h)                     |
| 327. Administration and procedure under the act.   | 337. Form of report of fatal accident, to be filed with the state bureau. (i)  |
| 328. List of forms to be used by employers, employés and persons having an interest under the act and the commissioners of the state bureau of labor statistics. | 338. Form of supplemental report of fatal accident, to be filed when the basis for final settlement is determined. (j)                   |
| 329. Form of employer's notice to the state bureau of his election not to accept the act. (a)  | 339. Form of report of non-fatal accident, to be submitted to the state bureau. (k)  |
| 330. Form of employer's notice to the state bureau of his intention to discontinue compensation payments. (b)  | 340. Form of supplemental report of non-fatal accident, to be forwarded to the state bureau when the injured person has recovered. (l)   |
| 331. Form of employer's notice to his employés of his intention to discontinue compensation payments (c).  | 341. Form of report to be made by medical and surgical examiners as to the nature, extent and probable duration of employé's injury. (m) |
| 332. Form of notice given by employé of his refusal to accept the act. (d)   | 342. Form of employé's petition for lump sum payment in lieu of installment payments. (n)  |
| 333. Form of statement of compensation provisions of the act, to be furnished to the employé personally or posted in the establishment. (e)                      | 343. Form of employé's petition for a lump sum payment where there is complete   |
| 334. Form of employé's notice of injury and claim for compensation. (f)  |  |

Sec.	Sec.
disability and where compensation has been at the specified rate for at least six months. (o)	349. Form of petition appealing from award made by board of arbitrators. (u)
344. Form of petition by employé's administrator for lump sum payment. (p)	350. Form of bond to be filed upon an appeal from an award made by board of arbitrators. (v)
345. Form of employer's petition that he be permitted to make a lump sum payment, instead of instalment payments. (q)	351. Form of demand for a jury upon an appeal from an award made by board of arbitrators. (w)
346. Form of employer's petition for the appointment of a guardian, conservator or administrator. (r)	352. Form of petition for the appointment of a third medical practitioner or surgeon for the purpose of determining the nature of the employé's injury. (x)
347. Form of employé's petition for the appointment of a third arbitrator. (s)	353. Form of petition for the review of an agreement or award. (y)
348. Form of report of board of arbitrators. (t)	

§ 325. Nature and scope of the act.—The employer who refuses to accept the provisions of the act is denied the common law defenses of assumed risk, fellow servant and contributory negligence, but contributory negligence may be considered by the jury in reducing the amount of damages. The compensation set forth in the act are paid directly by the employer, The administration of the act shall be by agreement of the parties or through local boards of arbitration on petition of the employer and employé, whose findings are subject to appeal to the courts and the right of trial by jury is reserved.

The law covers an enumerated list of dangerous employments and all injuries growing out of them shall be recompensed unless the injury results from a deliberate intention to cause the same. It also covers all employés who are exposed to the necessary hazard of said dangerous employments.

In case of disability, compensation begins after the

first week. In death cases where an employé leaves dependents, the compensation is a sum equal to four times the average annual earnings of the deceased, but in no case shall it be less than \$1,500, or shall it exceed \$3,500, plus necessary medical or surgical fees. In case of death without dependents, the compensation is a sum not to exceed \$150 for burial expenses. In cases of total disability the compensation is 50 per cent. of the weekly earnings for 8 years, calculated on a minimum of \$5 and a maximum wage of \$12, not to exceed \$3,500. Where complete disability continues, then compensation is paid during life and is equal to 8 per cent. of death benefit, and not less than \$10 per month. In case of partial disability, the compensation paid is 50 per cent. of loss of weekly wages, with \$12 maximum per week, for not more than eight years. In cases of partial and total disability the servant is paid necessary medical, surgical and hospital expenses for eight weeks, not exceeding \$200. The necessary services of physician and surgeon for eight weeks is without limit as to amount.

**§ 326. Text of Illinois Workmen's Compensation law.**—This act is entitled an act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment. It took effect May 1, 1912, and reads as follows:

Sec. 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly: That any employer covered by the provisions of this act in this state may elect to provide and pay compensation for injuries sustained by any employé arising out of and in the course of the employment according to the provisions of this act, and thereby relieve himself from any liability for the recovery of damages, except as herein provided. If, however, any such employer shall elect

not to provide and pay the compensation to any employé who has elected to accept the provisions of this act, according to the provisions of this act he shall not escape liability for injuries sustained by such employé arising out of and in the course of his employment because

1. The employé assumed the risks of the employer's business.

2. The injury or death was caused in whole or in part by the negligence of a fellow servant.

3. The injury or death was proximately caused by the contributory negligence of the employé, but such contributory negligence shall be considered by the jury in reducing the amount of damages.

- a. Every such employer is presumed to have elected to provide and pay the compensation according to the provisions of this act, unless and until notice in writing of his election to the contrary is filed with the State Bureau of Labor Statistics.

- b. Every employer within the provisions of this act failing to file such notice shall be bound hereby as to all his employés who shall elect to come within the provisions of this act until January 1st of the next succeeding year and for terms of each year thereafter: Provided, any such employer may elect to discontinue the payments of compensation herein provided only at the expiration of any such calendar year, by filing notice of his intention to discontinue such payments, with the State Bureau of Labor Statistics, at least sixty days prior to the expiration of any such calendar year, and by posting such notice in the plant, shop, office or place of work, or by personal service, in written or printed form, upon such employé, at least sixty days prior to the expiration of any such calendar year.

- c. In the event any employer elects to provide and pay compensation provided in this act, then every employé of such employer, as a part of his contract of hir-

ing or who may be employed at the time of the taking effect of this act and the acceptance of its provisions by the employer, shall be deemed to have accepted all the provisions of this act and shall be bound thereby unless within thirty days after such hiring and after the taking effect of this act, he shall file a notice to the contrary with the secretary of the State Bureau of Labor Statistics, whose duty it shall be to immediately notify the employer, and if so notified, the employer shall not be deprived of any of his common law or statutory defenses, and until such notice to the contrary is given to the employer, the measure of liability of the employer for any injury shall be determined according to the compensation provisions of this act: Provided, however, that before any such employé shall be bound by the provisions of this act, his employer shall either furnish to such employé personally at the time of his hiring, or post in a conspicuous place at the plant or in the room or place where such employé is to be employed, a legible statement of the compensation provisions of this act.

Sec. 2. The provisions of this act shall apply to every employer in the state engaged in the building, maintaining or demolishing of any structure; in any construction or electrical work; in the business of carriage by land or water and loading and unloading in connection therewith (except as to carriers who shall be construed to be excluded herefrom by the laws of the United States relating to liability to their employés for personal injuries while engaged in interstate commerce where such laws are held to be exclusive of all state regulations providing compensation for accidental injuries or death suffered in the course of employment); in operating general or terminal store-houses; in mining, surface mining, or quarrying; in any enterprise, or branch thereof, in which explosive materials are manufactured, handled or used in dangerous quantities; in any enterprise wherein molten metal or injurious gases

or vapors or inflammable fluids are manufactured, used, generated, stored or conveyed in dangerous quantities; and in any enterprise in which statutory regulations are now or shall hereafter be imposed for the guarding, using or the placing of machinery or appliances, or for the protection and safe-guarding of the employés therein, each of which employments is hereby determined to be especially dangerous, in which from the nature, conditions and means of prosecution of the work therein, extraordinary risks to life and limb of the employé engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for accidents to the employés therein.

Sec. 3. No common law or statutory right to recover damages for injury or death sustained by any employé while engaged in the line of his duty as such employé other than the compensation herein provided shall be available to any employé who has accepted the provisions of this act or to any one wholly or partially dependent upon him or legally responsible for his estate: Provided, that when the injury to the employé was caused by the intentional omission of the employer, to comply with statutory safety regulations, nothing in this act shall affect the civil liability of the employer. If the employer is a partnership, such omission must be that of one of the partners thereof, and if a corporation, that of any elective officer thereof.

Sec. 4. The amount of compensation which the employer who accepts the provisions of this act shall pay for injury to the employé which results in death, shall be:

a. If the employé leaves any widow, child or children, or parents or other lineal heirs to whose support he had contributed within five years previous to the time of his death, a sum equal to four times the average annual earnings of the employé, but not less in any

event than one thousand five hundred dollars, and not more in any event than three thousand five hundred dollars. Any weekly payments, other than necessary medical or surgical fees, shall be deducted in ascertaining such amount payable on death.

b. If the employé leaves collateral heirs dependent upon his earnings, such a percentage of the sum provided in section "a" as the contributions which deceased made to the support of these dependents, bore to his earnings.

c. If the employé leaves no widow or child or children, parents or lineal or collateral heirs dependent upon his earnings, a sum not to exceed one hundred and fifty dollars for burial expenses.

d. All compensation provided for in this section to be paid in case injury results in death, shall be paid in instalments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employé were paid while he was living; or if this shall not be feasible, then the installments shall be paid weekly.

e. The compensation to be paid for injuries which result in death, as provided for in this section, shall be paid to the personal representative of the deceased employé and shall be distributed by such personal representative to the beneficiaries entitled thereto, in accordance with the laws of this state relating to the descent and distribution of personal property.

Sec. 5. The amount of compensation which the employer who accepts the provisions of this act shall provide and pay for injury to the employé resulting in disability shall be:

a. Necessary first aid, medical, surgical and hospital services, also medicine and hospital services for a period not longer than eight weeks, not to exceed, however, the amount of \$200.00, also necessary services of a physician or surgeon during such period of disability,

unless such employé elects to secure his own physician or surgeon.

b. If the period of disability lasts for more than six working days, and such fact is determined by the physician or physicians, as provided in section 9, compensation equal to one-half of the earnings, but not less than \$5.00 nor more than \$12.00 per week, beginning on the eighth day of disability, and as long as the disability lasts, or until the amount of compensation paid equals the amount payable as a death benefit.

c. If any employé, by reason of any accident arising out of and in the course of his employment, receive any serious and permanent disfigurement to the hands or face, but which injury does not actually incapacitate the employé from pursuing his usual or customary employment so that it is possible to measure compensation in accordance with the scale of compensation and the methods of computing the same herein provided, such employé shall have the right to resort to the arbitration provisions of this act for the purpose of determining a reasonable amount of compensation to be paid to such employé, but not to exceed one-quarter ( $\frac{1}{4}$ ) the amount of his compensation in case of death.

d. If after the injury has been received it shall appear upon medical examination as provided for in section 9, that the employé has been partially, though permanently incapacitated from pursuing his usual and customary line of employment, he shall receive compensation equal to one-half of the difference between the average amount which he earned before the accident and the average amount which he is earning, or is able to earn in some suitable employment or business after the accident, if such employment is secured.

e. In the case of complete disability which renders the employé wholly and permanently incapable of work, compensation for the first eight years after the day the injury was received, equal to 50 per cent of his earnings,



but not less than \$5.00 nor more than \$12.00 per week. If complete disability continues after the payment of a sum equal to the amount of the death benefit or after the expiration of the eight years, then a compensation during life, equal to 8 per cent of the death benefit which would have been payable had the accident resulted in death. Such compensation shall not be less than \$10.00 per month and shall be payable monthly.

(1) In case death occurs before the total of the payments made equals the amount payable as a death benefit, as provided in section 4, article a, then in case the employé leaves any widow, child or children, or parents, or other lineal heirs, they shall be paid the difference between the compensation for death and the sum of such payment, but in no case shall this sum be less than \$500.00.

(2) In cases of complete disability, after compensation has been paid at the specified rate for a term of at least six months, the employé shall have the privilege of filing a petition in accordance with article d of section 4 of this act, asking for a lump sum payment of the difference between the sum of the payments received and the compensation to which he was entitled when such permanent disability has been definitely determined. For the purpose of this section, blindness or the total irrecoverable loss of sight, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent paralysis of the legs or arms, and a fracture of the skull resulting in incurable imbecility or insanity, shall be considered complete and permanent disability: Provided, these specific cases of complete disability shall not, however, be construed as excluding other cases.

(3) In fixing the amount of the disability payments, regard shall be had to any payments, allowance or benefit which the employé may have received from

the employer during the period of his incapacity, except the expenses of necessary medical or surgical treatment. In no event, except in cases of complete disability as defined above, shall any weekly payment payable under the compensation plan in this section provided exceed \$12.00 per week, or extend over a period of more than eight years from the date of the accident. In case an injured employé shall be incompetent at the time when any right or privilege accrues to him under the provisions of this act, a conservator or guardian of the incompetent, appointed pursuant to law, may on behalf of such incompetent, claim and exercise any such right or privilege with the same force and effect as if the employé himself had been competent and had claimed or exercised said right or privilege; and no limitations of time by this act provided, shall run so long as said incompetent employé had no conservator or guardian.

Sec. 5½. Any person entitled to compensation under this act, or any employer who shall be bound to pay compensation under this act, who shall desire to have such compensation, or any part thereof, paid in a lump sum, may petition any court of competent jurisdiction of the county in which the employé resided or worked at the time of disability or death, asking that such compensation be so paid, and if upon proper notice to the interested parties, and a proper showing made before such court, it appears to the best interest of the parties that such compensation be so paid, the court shall order payment of a lump sum, and where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, shall be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this act, and liable to pay such compensation, may petition for such appointment where no such legal representatives have been appointed or acting for such party or parties so under disability.

Sec. 6. The basis for computing the compensation provided for in sections 4 and 5 of the act shall be as follows:

a. The compensation shall be computed on the basis of the annual earnings which the injured person received as salary, wages or earnings in the employment of the same employer during the year next preceding the injury.

b. Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employé was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

c. The annual earnings if not otherwise determinable shall be regarded as 300 times the average daily earnings in such computation.

d. If the injured person has not been engaged in the employment for a full year immediately preceding the accident, the compensation shall be computed according to the annual earnings which persons of the same class in the same or in neighboring employments of the same kind have earned during such period. And if this basis of computation is impossible, or should appear to be unreasonable, three hundred times the amount which the injured person earned on an average on those days when he was working during the year next preceding the accident, shall be used as a basis for the computation.

e. In the case of injured employés who earn either no wage or less than three hundred times the usual daily wage or earnings of the adult day laborer in the same line of industry of that locality, the yearly wage shall be reckoned as three hundred times the average daily local wage.

f. As to employés in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number shall be used

instead of three hundred as a basis for computing the annual earnings, provided the minimum number of days which shall be used for the basis of the year's work shall be not less than two hundred.

g. Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employé to cover any special expense entailed on him by the nature of his employment.

h. In computing the compensation to be paid to any employé who, before the accident for which he claims compensation, was disabled and drawing compensation under the terms of this act, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which he may have suffered.

Sec. 7. The compensation herein provided shall be the measure of the responsibility which the employer has assumed for injuries or death that may occur to employés in his employment subject to the provisions of this act, and it shall not be in any way reduced by contributions from employés.

Sec. 8. If it is proved that the injury to the employé resulted from his deliberate intention to cause such injury, no compensation with respect to that injury shall be allowed.

Sec. 9. Any employé entitled to receive disability payments shall be required if requested by the employer to submit himself for examination at the expense of the employer to a duly qualified medical practitioner or surgeon selected by the employer, at a time and place reasonably convenient for the employé, as soon as practicable after the injury, and also one week after the first examination, and thereafter at intervals not oftener than once every four weeks, which examina-

tions shall be for the purpose of determining the nature, extent and probable duration of the injury received by the employé, and for the purpose of adjusting the compensation which may be due the employé from time to time for disability according to the provisions of sections 4 and 5 of this act: Provided, however, that such examination shall be made in the presence of a duly qualified medical practitioner or surgeon provided and paid for by the employé, if such employé so desires, and in the event of a disagreement between said medical practitioners or surgeons as to the nature, extent or probable duration of said injury or disability, they may agree upon a third medical practitioner or surgeon, and, failing to agree upon such third medical practitioner or surgeon, the judge of the county court of the county where the employé resided or was employed at the time of the injury, shall within six days after petition filed in such court for that purpose, select a third medical practitioner or surgeon and the majority report of such three physicians as to the nature, extent and probable duration of such injury or disability shall be used for the purpose of estimating the amount of compensation payable under this act. If the employé refuses so to submit himself to examination or unnecessarily obstructs the same, his right to compensation payments shall be temporarily suspended until such examination shall have taken place, and no compensation shall be payable under this act during such period.

Sec. 10. Any question of law or fact arising in regard to the application of this law in determining the compensation payable hereunder shall be determined either by agreement of the parties or by arbitration as herein provided. In case any such question arises which cannot be settled by agreement, the employé and the employer shall each select a disinterested party and the judge of the county court or other court of competent jurisdiction of the county where the injured employé

resided or worked at the time of the injury, shall appoint a third disinterested party, such persons to constitute a board of arbitrators for the purpose of hearing and determining all such disputed questions of law or fact arising in regard to the application of this law in determining the compensation payable hereunder; and it shall be the duty of both employé and employer to submit to such board of arbitrators not later than ten days after the selection and appointment of such arbitrators all facts or evidence which may be in their possession or under their control, relating to the questions to be determined by said arbitrators; and said board of arbitrators shall hear all the evidence submitted by both parties and they shall have access to any books, papers or records of either the employer or the employé showing any facts which may be material to the questions before them, and they shall be empowered to visit the place or plant where the accident occurred, to direct the injured employé to be examined by a regular practicing physician or surgeon, and to do all other acts reasonably necessary for a proper investigation of all matters in dispute. A copy of the report of the arbitrators in each case shall be prepared and filed by them with the State Bureau of Labor Statistics, and shall be binding upon both the employer and employé except for fraud and mistake: Provided, that either party to such arbitration shall have the right to appeal from such report or award of the arbitrators to the circuit court or the court that appointed the third arbitrator of the county where the injury occurred by filing a petition in such court within twenty days after the filing of the report of the arbitrators, and upon filing a good and sufficient bond, in the discretion of the court, and upon such appeal the questions in dispute shall be heard *de novo*, and either party may have a jury upon filing a written demand therefor with his petition.

Sec. 11. Any person entitled to payment under the

compensation provisions of this act from any employer shall have the same preferential claim therefor against the property of the employer as is now allowed by law for a claim by such person against such employer for unpaid wages or for personal services, such preference to prevail against wage claims of all other employés, not entitled to compensation for injuries, and the payments due under such compensation provisions shall not be subject to attachment, levy, execution, garnishment or satisfaction of debts, except to the same extent and in the same manner as wages or earnings for personal service are now subject to attachment, levy, execution, garnishment or satisfaction of debts, under the laws of this state, and shall not be assignable. Any right to receive compensation hereunder shall be extinguished by the death of the person or persons entitled thereto, subject to the provisions of this act relative to compensation for death received in the course of employment. No claim of any attorney at law for services in securing a recovery under this act shall be an enforceable lien thereon unless the amount of the same be approved in writing by a judge of a court of record, which approval may be made in term time or vacation.

Sec. 12. Any contract or agreement made by any employer or his agent or attorney with any employé or any other beneficiary of any claim under the provisions of this act within seven days after the injury shall be presumed to be fraudulent.

Sec. 13. No employé or beneficiary shall have power to waive any of the provisions of this act in regard to the amount of compensation which may be payable to such employé or beneficiary hereunder.

Sec. 14. No proceedings for compensation under this act shall be maintained unless notice of the accident has been given to the employer as soon as practicable after the happening thereof, and during such disability, and unless claim for compensation has been

made within six months after the injury, except that in case of an accident resulting in temporary disability, notice of such accident must be given to the employer within thirty days after said accident; or in case of the death of the employé or in the event of his incapacity, within six months after such death or incapacity; or in the event that payments have been made under the provisions of this act, within six months after such payments have ceased. No want or defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings by arbitration or otherwise by the employé, unless the employer proves that he is unduly prejudiced in such proceedings by such want, defect or inaccuracy. Notice of the accident shall, in substance apprise the employer of the claim of compensation made and shall state the name and address of the employé injured, the approximate date and place of the accident, if known, and in simple language the cause thereof; which notice may be served personally or by registered mail addressed to the employer at his last known residence or place of business: Provided, that the failure on the part of any person entitled to such compensation to give such notice shall not relieve the employer from his liability for such compensation, when the facts and circumstances of such accident are known to such employer or his agent, supervising work in which such employé was engaged at the time of the injury.

Sec. 15. This act shall not affect or disturb the continuance of any existing insurance, mutual aid, benefit, or relief association or department, whether maintained in whole or in part by the employer or whether maintained by the employés, the payment of benefits of such association or department being guaranteed by the employer or by some person, firm or corporation for him: Provided, the employer contributes to such association or department an amount sufficient to insure the employés or other beneficiary the full compensation herein



provided, exclusive of the cost of the maintenance of such association or department without any expense to the employé. This act shall not prevent the organization and maintaining under the insurance law of this state of any benefit or insurance company for the purpose of insuring against the compensation provided for in this act, the expense of which is maintained by the employer. This act shall not prevent the organization or maintaining under the insurance laws of this state of any voluntary mutual aid, benefit or relief association among employés for the payment of additional accident or sick benefits.

No existing insurance, mutual aid, benefit or relief association or department shall, by reason of anything herein contained, be authorized to discontinue its operation without first discharging its obligations to any and all persons carrying insurance in the same or entitled to relief or benefits therein.

Any contract of employment, relief benefit, or insurance or other device whereby the employé is required to pay any premium or premiums for insurance against the compensation provided for in this act shall be null and void, and any employer withholding from the wages of any employé any amount for the purpose of paying any such premium shall be guilty of a misdemeanor and punishable by a fine of not less than ten dollars nor more than twenty-five dollars in each offense in the discretion of the court.

Sec. 16. Any person who shall become entitled to compensation under the provisions of this act, shall, in the event of his inability to recover such compensation from the employer on account of his insolvency, be subrogated to all the rights of such employer against any insurance company or association which may have insured such employer against loss growing out of the compensation required by the provisions of this act to be paid by such employer, and in such case only, a pay-

ment of the compensation that has accrued to the person entitled thereto in accordance with the provisions of this act, shall relieve such insurance company from such liability.

Sec. 17. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person, other than the employer, to pay damages in respect thereof:

a. The employé or beneficiary may take proceedings both against that person to cover damages and against the employer for compensation, but the amount of the compensation which he is entitled to under this act shall be reduced by the amount of damages recovered.

b. If the employé or beneficiary has recovered compensation under this act, the employer by whom the compensation was paid or the person who has been called upon to pay the indemnity under sections 4 and 5 of this act, may be entitled to indemnity from the person so liable to pay damages as aforesaid, and shall be subrogated to the rights of the employé to recover damages therefor.

Sec. 18. An agreement or award may, at any time after six months, and before eighteen months, from the date of filing, be reviewed, upon the application of either party, on the ground that the incapacity of the employé has subsequently increased or diminished. Such application shall be made to any court of competent jurisdiction; and unless the parties consent to arbitration, the court may appoint a medical practitioner to examine the employé and report upon his condition; and upon his report, and after hearing all the evidence the court may modify such agreement or award, as may be just, by ending, increasing or diminishing the compensation, subject to the limitations hereinbefore provided.

Sec. 19. It shall be the duty of every employer within the provisions of this act to send to the secretary

of the State Bureau of Labor Statistics in writing an immediate report of all accidents or injuries arising out of or in the course of the employment and resulting in death; it shall also be the duty of every such employer to report between the 15th and the 25th of each month to the secretary of the State Bureau of Labor Statistics all accidents or injuries for which compensation has been paid under this act, which accidents or injuries entail a loss to the employé of more than one week's time, and in case the injury results in permanent disability, such report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All such reports shall state the date of the injury, including the time of day or night, the nature of the employer's business, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the nature of the injury, the length of disability and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured person, or to his legal representative or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons', and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known. The making of reports as provided herein shall release the employer covered by the provisions of this act from making such reports to any other officer of the state.

Sec. 20. Any person, firm or corporation who undertakes to do or contracts with others to do, or have done for him, them or it, any work embraced in section 2 of this act, requiring such dangerous employment of employés in, or about premises where he, they or it, as principal or principals, contract to do such work or any part thereof, and does not require that the compensation provided for in this act shall be insured to the employé

or beneficiary by any such person, firm or corporation undertaking to do such work and any such person, firm or corporation who creates or carries into operation any fraudulent scheme, artifice or device to enable him, them or it to execute such work without such person, firm or corporation being responsible to the employé or beneficiaries entitled to such compensation under the provisions of this act, such person, firm or corporation shall be included in the term "employer" and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for, and be subject to all the provisions of this act.

Sec. 21. The term "employé" as used in this act shall be held to include only such persons as may be exposed to the necessary hazards of carrying on any employment or enterprise referred to in section 2 of this act. Persons whose employment is of a casual nature and who are employed otherwise than for the purpose of the employers' trade or business, are not included in the foregoing definition.

Sec. 22. Section 21 shall not be construed to include any employé engaged in any work of an incidental character unconnected with the dangers necessarily involved in carrying on any employment or enterprise referred to in section 2, or in any work of a clerical or administrative nature which does not expose the employé to the inherent hazards of any such employment or enterprise.

#### PENALTIES.

Sec. 23. Any willful neglect, refusal, or failure to do the things required to be done by any section, clause, or provisions of this act, on the part of the persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, member of an arbitration board herein provided for, or with the sec-

retary of the Bureau of Labor Statistics or his deputy, in the discharge of the duties herein imposed upon any of them, or any refusal to comply with the terms of this act, shall be deemed a misdemeanor, punishable by a fine of not less than \$10.00 nor more than \$500, at the discretion of the court.

Sec. 23½. The right of action for damages caused by any such injury, at common law or other statute in force prior to the taking effect hereof shall not be affected by this act and every existing right of action for negligence or to recover damages for injury resulting in death, is continued and nothing in this act shall be construed as limiting the right of such action so accrued before the taking effect of this act.

Sec. 24. The invalidity of any portion of this act shall in no way affect the validity of any other portion thereof which can be given effect without such invalid part.

**§ 327. Administration and procedure under the act.**—The formal procedure under this act is limited to the filing of certain notices under the direction of the State Bureau of Labor Statistics and these are fully set out in the following section. The act does not create an industrial commission or board of awards to administer the act. In this respect the act is presumed to work automatically. The law simply provides for the settlement of claims by voluntary agreements of the parties, or such as may be arrived at through local boards of arbitration, which are subject to appeals to the courts and to the right of trial by jury.

**§ 328. List of forms to be used by employers, employes and persons having an interest under the act and the commissioners of the state bureau of labor statistics.**—The State Bureau of Labor Statistics of the State of Illinois, has prepared certain forms and the author has formulated a number of additional forms to meet the

requirements of the law. These forms are designated and entitled as follows:

(a) Employer's notice to Bureau of Labor statistics of his election not to accept the act.

(b) Employer's notice to Bureau of Labor statistics of his intention to discontinue compensation payments.

(c) Employer's notice to his employés of his intention to discontinue compensation payments.

(d) Notice given by employé of his refusal to accept the act.

(e) Statement of compensation to be posted by employer in his plant.

(f) Employé's notice of injury and claim for compensation.

(g) Notice to employer of accident causing employé's death.

(h) Notice of intention to file petition asking for payment of lump sum.

(i) Report of fatal accident to Bureau of Labor statistics.

(j) Supplemental report of fatal accident to Bureau when basis of final settlement determined.

(k) Report of non-fatal accident to Bureau.

(l) Supplemental report of non-fatal accident to Bureau after recovery of injured person.

(m) Report of medical and surgical examiners.

(n) Employé's petition for lump sum payment in lieu of instalment payment.

(o) Employé's petition for lump sum payment after six months in case of total disability.

(p) Petition by employé's administrator for lump sum payment.

(q) Employer's petition to make lump sum payment instead of instalment payment.

(r) Employer's petition for guardian, conservator or administrator.

(s) Petition for appointment of third arbitrator.

- (t) Report of arbitrators.
- (u) Petition for appeal from award of arbitrators.
- (v) Appeal bond from award of arbitrators.
- (w) Demand for jury on appeal from arbitrators.
- (x) Petition for appointment of third physician and surgeon to determine extent of injury.
- (y) Petition for review of agreement or award.

**§ 329. Form of employer's notice to the state bureau of his election not to accept the act. (a)<sup>1</sup>**

To the State Bureau of Labor Statistics of the State of Illinois, Springfield:

Notice is hereby given you, pursuant to law, that the undersigned employer (or that the undersigned partnership or that the ----- company or corporation), being engaged in a business or occupation comprehended within the scope and meaning of an act of the general assembly of the State of Illinois, entitled "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, elects not to accept or come within the purview of the said act, but the said employer (or partnership or company or corporation) hereby notifies you that he (or it) will not be obligated by the said act or any provision or provisions thereof.

(Date) -----, 19----

(Add signature of employer. In case of a corporation, the signature of the president or secretary should be affixed, stating his official position).

**§ 330. Form of employer's notice to the state bureau of his intention to discontinue compensation payments. (b)<sup>2</sup>**

---

<sup>1</sup> Every employer whose business is of such a character as to bring him within the statute is presumed to have elected to provide and pay the compensation according to the provisions of the act unless and until notice in writing of his election to the contrary is filed with the state bureau of labor statistics. Workmen's Compensation Law, § 1, (3a).

Every employer within the act who fails to file notice of his rejection of the law will be bound as to all employes who elect to come within the provisions of the statute until January 1 of the next succeeding year and for terms of each year thereafter. Workmen's Compensation Law, § 1, (3b).

<sup>2</sup> The employer has the privilege of electing to discontinue the

To the State Bureau of Labor Statistics of the State of Illinois, Springfield:

Notice is hereby given you, pursuant to law, that the undersigned employer (or that the undersigned partnership or that the ----- company or corporation), being engaged in a business or occupation comprehended within the scope and meaning of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, and having accepted the said act by operation of law and conducted his (or its) business thereunder, now elects to discontinue, from and after December 31 next ensuing, the payments of compensation provided for by the said act, and the said employer (or partnership or company or corporation) hereby notifies you that, from and after the date last aforesaid, he (or it) will not be obligated by the said act or any provision or provisions thereof.

(Date) -----, 19----

(Signature of employer. In the case of a corporation, the signature of the president or secretary should be affixed and his official position should be given.)

### § 331. Form of employer's notice to his employé of his intention to discontinue compensation payments. (c)<sup>3</sup>

Notice to the Employé of -----

Notice is hereby given you, pursuant to law, that the undersigned employer (or that the undersigned partnership or that the ----- company or corporation), has filed with the State Bureau of Labor Statistics of the State of Illinois, at Springfield, the following notice:

(Here insert notice sent to the state bureau, as in the preceding form).

### § 332. Form of notice given by employé of his refusal to accept the act. (d)<sup>4</sup>

payments at the expiration of any calendar year. In such case he is required to file with the state bureau of labor statistics notice of his intention at least sixty days prior to the expiration of such calendar year. It is his duty also to post such notice in the plant or place of work or to serve the notice personally on such employé, at least sixty days before the expiration of the calendar year. Workmen's Compensation Law, § 1, (3b). See form immediately following.

<sup>3</sup> See note under the section immediately preceding.

<sup>4</sup> When an employer elects to come within the act, every person employed by him will be deemed, as a part of his contract of hiring,



To the State Bureau of Labor Statistics of the State of Illinois, Springfield:

Notice is hereby given you, pursuant to law, that the undersigned, who is in the employ of ----- (name of employer), of the City of -----, in the State of Illinois, engaged in a business or occupation comprehended within the scope and meaning of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, declines to accept the said act or to come within its purview or operation, and the said employé hereby notifies you that he will not be bound or obligated by the said act or any provision or provisions thereof.

(Date) -----, 19----

(Signature).

**§ 333. Form of statement of compensation provisions of the act, to be furnished to the employé personally or posted in the establishment. (e)<sup>5</sup>**

**STATE OF ILLINOIS**

**Workmen's Compensation Act**

**NOTICE TO EMPLOYEES**

The Workmen's Compensation Act, in force May 1st, 1912, provides that before any employé shall be bound by the provisions of the Act his employer shall either furnish to the employé personally at the time of his hiring or post in a conspicuous place at the plant or in the room or place where such employé is to be employed a legible statement of the compensation provisions of the Act.

In accordance with this statutory requirement, the undersigned  
to have accepted all the provisions of the act. He will be bound thereby unless within thirty days he files a notice to the contrary with the state bureau of labor statistics. The last-named official must then immediately notify the employer, who, when so notified, will not be deprived of any of his common law or statutory defenses. Until such notice to the contrary is given, the measure of the employer's liability for any injury will be determined according to the compensation provisions of the statute. Workmen's Compensation Law, § 1 (3c).

<sup>5</sup> Before any employé will be bound by the provisions of the act, his employer must either furnish to him personally at the time of hiring or post in a conspicuous place in the establishment a legible statement of the compensation provisions of the law. Workmen's Compensation Law, § 1 (3c).

(The foregoing form may be used either for personal service upon the employé or for the purpose of posting in the work place).

hereby notifies all employés of the compensation provisions of the Workmen's Compensation Act and sets forth below a legible statement of the compensation provisions thereof, to-wit:

Section 4. Amounts of Compensation to be Paid in Every Case of Injury which Results in Death of an Employé shall be:

1. If employé leaves a widow, child or children, or parents, or other lineal heirs, four times the average annual earnings of the employé, and not less than \$1500 nor more than \$3500.

2. If employé leaves collateral heirs only, such percentage as the contributions which deceased made to such heirs bore to his earnings.

3. If employé leaves no heirs of any kind, not to exceed \$150 for burial expenses.

4. Compensation to be paid in installments equal to one-half the average earnings and paid at same intervals as wages were paid, or in weekly payments.

5. Compensation to be paid to executor or administrator for use of heirs.

Section 5. Compensation to be Paid for Every Case of Injury as follows:

1. First aid, medical, surgical and hospital services, and also medicine and hospital services for a period of not longer than 8 weeks and not to exceed \$200 and necessary services of a physician or surgeon furnished by the employer during such period of disability.

2. Half wages beginning on the eighth day of the disability, but not less than \$5.00 nor more than \$12.00 per week up to amount of death benefit.

3. Reasonable compensation in case of serious and permanent disfigurement of the hands or face, the amount to be fixed by agreement or arbitration, and not to exceed  $\frac{1}{4}$  the amount of compensation for death.

4. Partial permanent disability, one-half of the difference between the amount earned before the accident and the amount earned thereafter.

5. For complete disability, compensation for 8 years after the day the injury was received equal to 50% of his earnings, not less than \$5, nor more than \$12 per week, until the total paid equals the amount of the death benefit, or after the expiration of said 8 years, and thereafter compensation during life equal to 8% of the death benefit, which compensation shall not be less than \$10 per month, payable monthly.

6. In all cases of disability where payments have been made as above provided and death occurs before the total amount is paid, lineal heirs shall be paid the difference between the compensation paid for death and the sum of such disability payments, but in no case less than \$500.

7. Total disability shall include blindness, or the total irre-

coverable loss of sight; loss of both feet at or above the ankle; the loss of both hands at or above the wrists; the loss of one hand and one foot; an injury to the spine resulting in permanent paralysis of the legs or arms; and a fracture of the skull resulting in incurable imbecility or insanity or any other permanent disability, and after six months employé may file petition for payment of a lump sum.

8. Conservator or guardian to be appointed to receive compensation for an incompetent person or a minor.

Section 5 $\frac{1}{2}$ . Persons entitled to compensation may file petition for payment of benefits in a lump sum and court can authorize payment of such lump sum if it appears to the best interest of the parties.

Section 6. Compensation shall be computed on basis of annual earnings during the year preceding the injury and annual earnings, if not otherwise determinable, shall be 300 times the average daily earnings, and if not engaged for a full year preceding the accident, compensation shall be computed according to annual earnings of persons in same class of employment, and if this computation is impossible or unreasonable, it shall be 300 times the amount the injured person earned on an average on those days he worked with a minimum of 300 times the average daily wage. Earnings shall be based on the usual working day and shall exclude overtime earnings and also incidental payments for expenses incurred by the employé. If a person receiving compensation is again injured, the compensation for subsequent injuries shall be apportioned according to the additional incapacity or disability.

Section 7. Compensation which employer must pay shall not be reduced by any contributions from employés.

Section 8. No employé to receive compensation for an injury resulting from deliberate intention to cause such injury.

Section 9. Disabled employé required to submit to medical examination at expense of employer at the reasonable convenience of the employé after the injury, and also one week after the first examination, and thereafter not oftener than once every 4 weeks for the purpose of determining the nature, extent and probable duration of the injury, at which examination the employé may be represented by a physician, and if the two physicians disagree as to the nature, extent and probable duration of the injury, a third shall be selected by them or by the county judge, and if the employé refuses to submit to such examination, compensation to be suspended.

Section 10. All disagreements to be settled by three arbitrators, one appointed by the employer, one by the person entitled to benefits, and one by the county judge, to which arbitrators both parties shall submit all the facts within ten days and a copy of the report of such arbitrators shall be filed with the State Bureau of Labor Statistics. Said report shall be binding upon both sides

except in case of mistake, when it is provided an appeal may be taken to the Circuit Court or the Court that appointed the third arbitrator, and upon filing a good and sufficient bond; upon such appeal, either party may have a jury on filing a written demand therefor.

Section 11. Compensation is made a preferred claim and any attorney fees must be approved by the court.

Section 12. Any agreement of settlement made by the employer with the person entitled to benefits within seven days after the injury shall be presumed to be fraudulent.

Section 13. No employé or person entitled to benefits shall have power to waive any rights to compensation.

Section 14. No proceedings for compensation shall be taken unless notice is given to employer as soon as practicable after the injury and unless claim has been made within six months in case of permanent disability and within thirty days in case of temporary disability, and within six months after death or incapacity of the employé.

Notice shall state name and address of employé, date and place of accident and cause thereof, which notice may be served personally or by registered mail.

Defects in such notice shall not bar compensation, unless employer is unduly prejudiced thereby, and failure to give such notice entirely shall not relieve the employer from liability for compensation when the facts are known to the employer or to his agent supervising the work in which the employé was injured.

\* \* \*

Section 18. After six months and prior to 18 months, the amount of disability payments may be reviewed in accordance with the increased or diminished condition of disability upon application to any court of competent jurisdiction.

Notice. The foregoing is not a complete statement of all the various provisions of the Compensation Law, but only covers the specific provisions thereof relating to compensation as required by the Act. There are many other provisions of the law which are of importance to employés and with which they should be familiar, and a complete text of the law may be had by addressing

DAVID, ROSS,  
Secretary of the Bureau of Labor Statistics,  
Springfield, Illinois.

### § 334. Form of employé's notice of injury and claim for compensation. (f)<sup>6</sup>

To \_\_\_\_\_ (name of employer) :

Notice is hereby given you, pursuant to law, that \_\_\_\_\_  
(name of injured employé), who is in your employ and whose ad-

---

<sup>6</sup> No proceedings for compensation under the act may be maintained unless notice of the accident is given to the employer as soon

dress is No. ----, ----- street, City of -----, and State of Illinois, met with an injury arising out of and in the course of his employment; that the accident resulting in such injury occurred on the ----- day of -----, 19----, (approximate date if known), at ----- (approximate place of accident if known); that the cause of said accident was ----- (set out the cause in simple language); and that the said ----- (name of injured employé) claims compensation therefor under and by virtue of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912.

(Date) -----, 19----

(Signature).

### § 335. Form of notice to employer of accident causing employé's death. (g)<sup>7</sup>

To ----- (name of employer):

Notice is hereby given you, pursuant to law, that----- (name of deceased employé), who was in your employ at the time of the accident hereinafter mentioned and whose last address was No. ----, ----- Street, City of ----- and State of Illinois, met with an injury and accident arising out of and in the

as practicable after the accident happens and during the disability thereby produced. Claim for compensation must be made within six months after the injury or, if there is only a temporary disability, notice is to be given within thirty days. In case of the death of the employé or in event of his incapacity, the notice must be given within six months after such death or incapacity, or, if payments have been made under the provisions of the act, then within six months after the payments have ceased. Workmen's Compensation Law, § 14.

No want or defect or inaccuracy of the notice will be a bar to the maintenance of proceedings by arbitration or otherwise by the employé unless the employer proves that he is unduly prejudiced in such proceedings by reason of such want, defect or inaccuracy. Workmen's Compensation Law, § 14.

The notice may be served personally or by registered mail, addressed to the employer at his last known residence or place of business. Workmen's Compensation Law, § 14.

Failure on the part of any person entitled to compensation to give notice will not relieve the employer from his liability if the facts and circumstances of the accident are known to the employer or to his agent supervising work in which the employé was engaged at the time of the injury. Workmen's Compensation Law, § 14.

<sup>7</sup> See note under section immediately preceding.

course of his employment, such injury and accident producing death; that the accident occurred on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, (approximate date if known), at \_\_\_\_\_ (approximate place of accident if known); that the cause of said accident was \_\_\_\_\_ (set out the cause in simple language); that the said \_\_\_\_\_ (name of deceased employé), in consequence of said injury and accident, died on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and that compensation for such accidental death is hereby claimed under and by virtue of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912.

(Date) \_\_\_\_\_, 19\_\_\_\_

(Signature).

**§ 336. Form of notice of intention to file a petition asking for the payment of a lump sum by way of compensation. (h)<sup>8</sup>**

To \_\_\_\_\_:

Notice is hereby given you, pursuant to law, that the undersigned will, at the next term of the \_\_\_\_\_ court of the county of \_\_\_\_\_ and State of Illinois, file a petition in said court asking that the said court enter an order directing the payment, in a lump sum, of the compensation claimed by \_\_\_\_\_ under and by virtue of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912.

(Date) \_\_\_\_\_, 19\_\_\_\_

(Signature).

**§ 337. Form of report of fatal accident, to be filed with the state bureau. (i)<sup>9</sup>**

Date of reporting accident \_\_\_\_\_, 19\_\_\_\_

To the Secretary of the State Bureau of Labor Statistics, Springfield, Illinois:

Nature of employer's business\_\_\_\_\_. Date of the accident \_\_\_\_\_, 19\_\_\_\_. Hour \_\_\_\_\_ M. Date of death \_\_\_\_\_, 19\_\_\_\_. Hour \_\_\_\_\_ Age \_\_\_\_\_ years.

<sup>8</sup> Where a petition is filed asking for the payment of a lump sum instead of instalment payments, proper notice must be given to the interested parties. Workmen's Compensation Law, § 5½.

<sup>9</sup> The law provides that it shall be the duty of every employer within the provisions of the act to send to the secretary of the state

Sex ----- Married or single ----- Number of children ----- Number of other lineal heirs ----- Number of collateral heirs dependent ----- Direct cause of death ----- Specific occupation of the deceased ----- Nature of accident ----- Was death immediate? ----- Length of disability before death ----- days ----- hours. Number of hours comprising a day's work ----- Wages of deceased, per month \$-----; per week, \$-----; per day, \$-----; per hour \$----- Total average yearly earnings for the four years preceding death, \$----- Amount payable to heirs, \$----- At what intervals? ----- Paid by employer for first aid, medical, surgical and hospital services, \$----- Paid for funeral or burial expenses, \$----- By whom paid if known ----- Name of employer ----- Postoffice address ----- Name and official position of person making this report -----

**§ 338. Form of supplemental report of fatal accident, to be filed when the basis for final settlement is determined. (j)<sup>10</sup>**

Date of making this report-----, 19\_\_\_  
 To the Secretary of the State Bureau of Labor Statistics, Springfield, Illinois:  
 Nature of employer's business-----  
 Date of accident -----, 19\_\_\_  
 Date of death -----, 19\_\_\_  
 Wages of deceased, per month, \$-----; per week, \$-----; per day, \$-----; per hour, \$-----  
 Amount payable to heirs, \$-----  
 At what intervals -----

bureau of labor statistics in writing an immediate report of all accidents or injuries arising out of or in the course of the employment and resulting in death. The act prescribes the essential points of information which must be given in the report. Workmen's Compensation Law, § 19.

The foregoing form is furnished by the State Bureau of Labor Statistics and is to be used by all employers under the provisions of the act for the immediate reporting of fatal accidents, either where such accidents produce instant death or where death ensues within seven days.

<sup>10</sup> See note under the section immediately preceding as to the requirement of the law with reference to reporting fatal accidents.

The supplemental report is to be sent to the state bureau of labor statistics when all information required by law is obtained and the basis for final settlement has been determined.

Total amount of compensation paid to date of this report, \$-----.

Total amount of compensation to be paid, \$-----.

Total amount of all other expenses connected with this accident,  
\$-----.

By whom paid -----.

Name and postoffice address of employer -----.

Name and official position of person making this report-----.

**§ 339. Form of report of non-fatal accident, to be submitted to the state bureau. (k)<sup>11</sup>**

Date of reporting accident, -----, 19-----.

To the Secretary of the State Bureau of Labor Statistics, Springfield, Illinois:

Nature of employer's business ----- Date of accident or injury -----, 19----- Hour -----M.

Age ----- years. Sex ----- Married or single ----- Number of children-----.

Number of dependents----- Specific occupation of injured person ----- Direct cause of injury ----- Nature of the accident ----- Nature of the injury -----

Period of disability at date of this report, being the eighth day after the accident, ----- days. Number of hours comprising a day's work----- Wages of injured person, per month, \$-----; per week, \$-----; per day, \$-----; per hour, \$-----.

Amount of compensation paid at date of this report, \$----- Amount of compensation to be paid, \$-----

At what intervals ----- Amount paid for first aid: medical, surgical and hospital services, \$----- By whom paid -----

---

<sup>11</sup> It is the duty of every employer within the provisions of the act to report, between the 15th and the 25th of each month, to the secretary of the state bureau of labor statistics, all accidents or injuries for which compensation has been paid under the act, which accidents or injuries entail a loss to the employé of more than one week's time. In case the injury results in permanent disability, the report must be made as soon as it is determined that such permanent disability has resulted or will result from such injury. Workmen's Compensation Law, § 19.

The foregoing form is furnished by the state bureau of labor statistics and is to be used by all employers for reporting each month non-fatal accidents or injuries occurring to employés where there is a loss to the employé of more than a week's time. No further report is required until the recovery or permanent disability or death of the employé, when a full supplemental or final report is to be submitted at the expiration of sixty days, giving the total amount of compensation paid and all other items of expense incurred in the case.



----- Probable period of disability-----  
 Name of employer ----- Postoffice address-----  
 Name and official position of person making this report-----

**§ 340. Form of supplemental report of non-fatal accident, to be forwarded to the state bureau when the injured person has recovered. (1)<sup>12</sup>**

Date of making this report-----, 19-----  
 To the Secretary of the State Bureau of Labor Statistics, Springfield, Illinois:  
 Nature of employer's business ----- Date of accident -----, 19----- Age of injured -----  
 Sex ----- Occupation ----- Date of recovery -----, 19----- If not recovered, state how much longer the disability is expected to last -----  
 Total amount paid as compensation, \$----- Total amount paid for medical, surgical and hospital services since the amount paid for first aid, \$----- Name and postoffice address of employer -----  
 Name and official position of person making this report -----

**§ 341. Form of report to be made by medical and surgical examiners as to the nature, extent and probable duration of employé's injury. (m)<sup>13</sup>**

Know all men by these presents that we, -----, ----- and -----, duly qualified medical practitioners and surgeons, appointed, respectively, by ----- (name of employer), ----- (name of employé) and -----, judge of the county court of the county of -----, in the State of Illinois, pursuant to an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, and authorized and empowered, by virtue of the act of the general assembly aforesaid and by virtue of an order of the said -----, judge of the county court aforesaid, to make an examination of the said ----- (name

<sup>12</sup> See note under the section immediately preceding as to the requirement of the law with reference to reporting non-fatal accidents.

The supplemental report is to be sent to the state bureau of labor statistics after the injured person has recovered.

<sup>13</sup> See note under form (x), § 352.

of employé) in order to determine the nature, extent and probable duration of an injury sustained by the said \_\_\_\_\_ (name of employé) arising out of and in the course of his employment, and for the purpose of adjusting the compensation which may be due him for such disability occasioned as aforesaid, do hereby certify and report that we have made the examination aforesaid, and we do further certify and report that the injury or disability of the said \_\_\_\_\_ (name of employé), in our opinion, is of the following character, to-wit: \_\_\_\_\_

(Here insert results of examination.)

In witness whereof, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(Signed by a majority of the examiners.)

### § 342. Form of employé's petition for lump sum payment in lieu of instalment payments. (n)<sup>14</sup>

State of Illinois, \_\_\_\_\_ County } ss.

In the \_\_\_\_\_ Court.  
To the \_\_\_\_\_ Term, A. D. 19\_\_.

v.

Employé's petition for lump sum payment under the Workmen's Compensation Law.

To the Honorable Judge (or Judges) of the said Court:

Your petitioner respectfully represents that his occupation is that of \_\_\_\_\_; that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, he was employed by \_\_\_\_\_, the defendant herein, in the capac-

<sup>14</sup> The compensation, or any part of it, provided by the act may be paid in a lump sum when so ordered by a court of competent jurisdiction of the county in which the employé resided or worked at the time of his disability or death. A petition may be presented asking that the compensation be so paid. If the proper notice is given to the interested parties and a proper showing is made before the court and it appears to be to the best interests of the parties that the compensation be so paid, it is the duty of the court to order the payment to be made in a lump sum. Workmen's Compensation Law, § 5½.

If the employé desires to have only part of the compensation paid in a lump sum, change the paragraph next to the last so as to read: "Your petitioner further represents that a proper notice of this proceeding has been given to the interested parties, and that it

ity of\_\_\_\_\_, at a certain specified rate of compensation, to-wit: the rate of\_\_\_\_\_dollars per week (or month or as the case may be), and that he so continued in the employ of the said \_\_\_\_\_up to and including the day on which the injury hereinafter mentioned was sustained and still is so employed.

Your petitioner further represents that the business or occupation in which the said\_\_\_\_\_, defendant herein, was at the time of the said injury and still is engaged was and is the business or occupation of\_\_\_\_\_; that such business or occupation is comprehended within the scope and meaning of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912; that the said\_\_\_\_\_, defendant herein, was, at the time of the injury aforesaid and still is, operating and conducting his said business or occupation under the said act and subject to the provisions thereof, and that your petitioner was engaged in work and labor as aforesaid under the said act and subject to the provisions thereof.

is to the best interests of the said parties that the sum of\_\_\_\_\_dollars, being a part of the aforesaid total sum of\_\_\_\_\_dollars to which he, the said petitioner is entitled, be paid to the said petitioner in a lump sum." And change the last paragraph so as to read: "Your petitioner therefore respectfully prays that the said sum of\_\_\_\_\_dollars, being a part as aforesaid of the said total sum of\_\_\_\_\_dollars to which he, the said petitioner is entitled, be paid to him in a lump sum," etc.

If a part of the compensation has been paid in instalments, change the paragraph commencing, "Your petitioner further represents that the amount of compensation to which he was entitled," etc., to read: "Your petitioner further represents that the amount of compensation to which he was entitled when the nature of his injury was definitely determined was the sum of\_\_\_\_\_dollars, and that the said\_\_\_\_\_, defendant herein, pursuant to his duty under and by virtue of the act of the general assembly aforesaid, has made the following compensation payments to him, the petitioner, to-wit: The sum of\_\_\_\_\_dollars on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_, and the like sum of \_\_\_\_\_dollars on each and every week thereafter for and during a period of\_\_\_\_\_months (or weeks) from and after the said\_\_\_\_\_day of\_\_\_\_\_, 19\_\_, and that the difference between the sum of the said payments so received and the compensation to which he, the said petitioner, was entitled when the nature of the aforesaid injury was definitely determined is the sum of\_\_\_\_\_dollars, and that he is now therefore entitled to receive the said last-mentioned sum of\_\_\_\_\_dollars."

Your petitioner further represents that during the period of his said employment by the said\_\_\_\_\_, defendant herein, as aforesaid, to-wit: on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_, he, the said petitioner, met with an injury arising out of and in the course of his said employment; and that the nature, character and cause of the said injury were as follows:\_\_\_\_\_

(Here insert brief description, in simple language, of the nature and cause of the accident and resulting injury.)

Your petitioner further represents that the injury aforesaid has caused (or will cause, as the case may be) permanent disability (or temporary disability, as the case may be), in this, to-wit: that he, the said petitioner, as a direct result thereof, has sustained\_\_\_\_\_ (here state the nature of the injury).

Your petitioner further represents that the amount of compensation to which he was entitled when the nature of his injury was definitely determined was the sum of\_\_\_\_\_dollars; and that no part thereof has been paid to him by the said\_\_\_\_\_, defendant herein as aforesaid.

Your petitioner further represents that a proper notice of this proceeding has been given to the interested parties, and that it is to the best interests of the said parties that the said last-mentioned sum of\_\_\_\_\_dollars be paid to the said petitioner in a lump sum.

Your petitioner therefore respectfully prays that the said last-mentioned sum of\_\_\_\_\_dollars be paid to him in a lump sum and that your honor (or your honors), by order of this honorable court, direct and require the said\_\_\_\_\_, defendant herein, to make the said lump sum payment as aforesaid; and that your honor (or your honors) may grant such other and further relief in the premises as may be equitable.

§ 343. Form of employé's petition for a lump sum payment where there is complete disability and where compensation has been paid at the specified rate for at least six months. (o)<sup>15</sup>

---

<sup>15</sup>In cases of complete disability, after compensation has been paid at the specified rate for a term of at least six months, the employé has the privilege of filing a petition asking for a lump sum payment of the difference between the sum of the payments received and the compensation to which he was entitled when such permanent disability was definitely determined. Workmen's Compensation Law, § 5 (e2).

The compensation, or any part of it, provided by the act may be paid in a lump sum when so ordered by a court of competent juris-

State of Illinois }  
 -----County } ss.

In the-----Court.  
 To the-----Term, A. D. 19---

-----  
 v.  
 -----

Employé's petition for lump sum payment under the Workmen's Compensation Law.

To the Honorable Judge (or Judges) of the said Court:

Your petitioner respectfully represents that his occupation is that of-----; that on the-----day of-----, 19--, he was employed by-----, the defendant herein, in the capacity of-----, at a certain specified rate of compensation, to-wit: the rate of-----dollars per week (or month or as the case may be), and that he so continued in the employ of the said-----up to and including the day on which the injury hereinafter mentioned was sustained.

Your petitioner further represents that the business or occupation in which the said-----, defendant herein, was at the time of the said injury and still is engaged was and is the business or occupation of-----; that such business or occupation is comprehended within the scope and meaning of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912; that the said-----, defendant herein, was, at the time of the injury aforesaid, and still is, operating and conducting his said business or occupation under the said act and subject to the provisions thereof, and that your petitioner was engaged in work and labor as aforesaid under the said act and subject to the provisions thereof.

Your petitioner further represents that during the period of his said employment by the said-----, defendant herein, as

diction of the county in which the employé resided or worked at the time of his disability or death. Workmen's Compensation Law, § 5½.

The following are examples of complete and permanent disability: Blindness or the total irrecoverable loss of sight; the loss of both feet at or above the ankle; the loss of both hands at or above the wrist; the loss of one hand and one foot; an injury to the spine resulting in permanent paralysis of the legs or arms; a fracture of the skull resulting in incurable imbecility or insanity. This enumeration of specific instances of complete disability is not to be construed, however, as excluding other cases. Workmen's Compensation Law, § 5 (e2).

aforesaid, to-wit: on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_, he, the said petitioner, met with an injury arising out of and in the course of his said employment; and that the nature, character and cause of the said injury were as follows: \_\_\_\_\_

(Here insert brief description, in simple language, of the nature and cause of the accident and resulting injury.)

Your petitioner further represents that the injury aforesaid has caused (or will cause, as the case may be) permanent disability, in this, to-wit: that he, the said petitioner, as a direct result thereof, has suffered blindness and the total irrecoverable loss of sight (or state any other manifestation of complete disability, as the case may require).

Your petitioner further represents that, the said\_\_\_\_\_, defendant herein, pursuant to his duty under and by virtue of the act of the general assembly aforesaid, has made the following compensation payments to him, the petitioner, to-wit: The sum of \_\_\_\_\_dollars on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_, and the like sum of\_\_\_\_\_dollars on each and every week thereafter for and during a period of at least six months from and after the said\_\_\_\_\_day of\_\_\_\_\_, 19\_\_; and that the difference between the sum of the said payments so received and the compensation to which he, the said petitioner, was entitled, when the aforesaid permanent disability was definitely determined, is the sum of \_\_\_\_\_dollars.

Your petitioner further represents that it is to the best interests of the said parties that the said last-mentioned sum of\_\_\_\_\_dollars be paid to the said petitioner in a lump sum.

Your petitioner therefore respectfully prays that the said last-mentioned sum of\_\_\_\_\_dollars be paid him in a lump sum and that your honor (or your honors), by order of this honorable court, direct and require the said\_\_\_\_\_, defendant herein, to make the said lump sum payment as aforesaid; and that your honor (or your honors) may grant such other and further relief in the premises as may be equitable.

### § 344. Form of petition by employé's administrator for lump sum payment. (p)<sup>16</sup>

<sup>16</sup> Where an injury results in death, the employer is liable to pay compensation as follows: (1) If the employé leaves a widow, child or children or parents or other lineal heirs to whose support he had contributed within five years previous to the time of his death, compensation is to be allowed in a sum equal to four times the average annual earnings of the employé, but not less in any event than one thousand five hundred dollars and not more in any event than three thousand five hundred dollars; and any weekly

State of Illinois }  
 ----- County } ss.

In the ----- Court.  
 To the ----- Term, A. D. 19--.

-----  
 v.  
 -----

Petition by employé's administrator under the Workmen's Compensation Law.

To the Honorable Judge (or Judges) of the said Court:

Your petitioner respectfully represents that he is the administrator of the estate of -----, deceased; that during the lifetime of the said ----- (name of deceased employé), to-wit: on the

-----  
 payments, other than necessary medical or surgical fees, are to be deducted in ascertaining such amount payable on death; (2) if the employé leaves collateral heirs dependent upon his earnings, the compensation is to be such a percentage of the sum provided for above as the contributions which the deceased employé made to the support of these dependents bore to his earnings; (3) if the employé leaves no widow or child or children, parents or lineal or collateral heirs dependent upon his earnings, the sum to be allowed is not to exceed one hundred and fifty dollars for burial expenses; (4) the compensation is to be paid in instalments equal to one-half the average earnings, at the same intervals at which the wages or earnings of the employé were paid while he was living, or, if this is not feasible, then the instalments are to be paid weekly; (5) the compensation is to be paid to the personal representative of the deceased employé and is to be distributed by the personal representative to the beneficiaries entitled thereto, in accordance with the laws of Illinois relative to the descent and distribution of personal property. Workmen's Compensation Law, § 4.

In case part of the compensation has been paid in instalments, change the paragraph commencing, "Your petitioner further represents that the amount of compensation to which the said widow and child," etc., to read as follows: "Your petitioner further represents that the amount of compensation to which the said widow and child (or other heirs, as the case may be) were entitled at the time of the decease of the said ----- (name of deceased employé) was the sum of ----- dollars, and that weekly payments other than necessary medical and surgical fees have been made by the said -----, defendant herein, as follows, to-wit: The sum of ----- dollars on the ----- day of -----, 19--, and the like sum of ----- dollars on each and every week thereafter for and during a period of ----- weeks from the date of the first payment as aforesaid; and that, after deducting the

-----day of-----, 19--, he, the said----- (name of deceased employé), was employed by-----, the defendant herein, in the capacity of-----, at a certain specified rate of compensation, to-wit: the rate of-----dollars per week (or month or as the case may be), and that the said----- (name of deceased employé) continued in the employ of the said-----, defendant herein, up to and including the day on which the fatal injury hereinafter mentioned was sustained.

Your petitioner further represents that the business or occupation in which the said-----, defendant herein, was at the time of the said fatal injury and still is engaged was and is the business or occupation of-----; that such business or occu-

---

total amount of the said payments from the said sum of----- dollars due at the time of the decease of the said----- (name of deceased employé), there now remains a balance due the estate of the said----- (name of deceased employé) of -----dollars.

If it is desired to have only a part of the compensation paid in a lump sum, change the paragraph next to the last so as to read: "Your petitioner further represents that a proper notice of this proceeding has been given to the interested parties, and that it is to the best interests of the said parties that the sum of----- dollars, being a part of the aforesaid sum of-----dollars due the estate of the said----- (name of deceased employé), be paid to the petitioner in a lump sum." And change the last paragraph so as to read: "Your petitioner therefore respectfully prays that the said sum of-----dollars, being a part of the said sum of-----dollars due the estate of the said----- (name of deceased employé) as aforesaid, be paid to him in a lump sum," etc.

The compensation or any part of it, provided by the act may be paid in a lump sum when so ordered by a court of competent jurisdiction of the county in which the employé resided or worked at the time of his disability or death. A petition may be presented asking that the compensation be so paid. If the proper notice is given to the interested parties and a proper showing is made before the court and it appears to be to the best interests of the parties that the compensation be so paid, it is the duty of the court to order the payment to be made in a lump sum. Workmen's Compensation Law, § 5½.

Where the necessity exists and the proper application is made, a guardian, conservator or administrator must be appointed for any person under disability who is entitled to compensation under the act. An employer bound by the terms of the act and liable to pay such compensation may petition for such appointment where no legal representatives have been appointed or are acting for the person under disability. Workmen's Compensation Law, § 5½.



pation is comprehended within the scope and meaning of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912; that the said\_\_\_\_\_, defendant herein, was at the time of the happening of the fatal injury aforesaid and still is, operating and conducting his said business or occupation under the said act and subject to the provisions thereof; and that the said\_\_\_\_\_(name of deceased employé), was, at the time of the fatal injury aforesaid, engaged in work and labor as aforesaid under the said act and subject to the provisions thereof.

Your petitioner further represents that during the period of the said employment of the said\_\_\_\_\_(name of deceased employé) by the said\_\_\_\_\_, defendant herein, as aforesaid, to-wit: on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_\_, he, the said\_\_\_\_\_(name of deceased employé), met with an injury and accident arising out of and in the course of his employment, such injury and accident producing death; that the said accident occurred at\_\_\_\_\_ (approximate place of accident); that the cause of the said accident was\_\_\_\_\_(set out the cause in simple language); and that the said\_\_\_\_\_(name of deceased employé), in consequence of the said injury and accident, died on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_\_.

Your petitioner further represents that the said\_\_\_\_\_(name of deceased employé), at the time of his decease, left him surviving, his widow, \_\_\_\_\_, and one child, \_\_\_\_\_, of the age of\_\_\_\_\_ years, to whose support he, the said\_\_\_\_\_(name of deceased employé) had contributed within five years previous to the time of his decease (or set out the facts showing that he was survived by other lineal or collateral heirs).

Your petitioner further represents that that the amount of compensation to which the said widow and child (or other heirs, as the case may be) were entitled at the time of the decease of the said\_\_\_\_\_(name of deceased employé) was the sum of\_\_\_\_\_dollars and that no weekly payment or payments of any kind other than necessary medical and surgical fees were made by the said\_\_\_\_\_, defendant herein, to the said\_\_\_\_\_(name of deceased employé) or to any person or persons entitled thereto.

Your petitioner further represents that a proper notice of this proceeding has been given to the interested parties, and that it is to the best interests of the said parties that the said last-mentioned sum of\_\_\_\_\_dollars be paid to the said petitioner in a lump sum.

Your petitioner therefore respectfully prays that the said last-mentioned sum of\_\_\_\_\_dollars be paid to him in a lump sum and that your honor (or your honors), by order of this honorable

court, direct and require the said\_\_\_\_\_, defendant herein, to make the said lump sum payment as aforesaid; and that your honor (or your honors) may grant such other and further relief in the premises as may be equitable.

§ 345. Form of employer's petition that he be permitted to make a lump sum payment, instead of installment payments. (q)<sup>17</sup>

State of Illinois }  
\_\_\_\_\_ County } ss.

In the\_\_\_\_\_Court.  
To the\_\_\_\_\_Term, A. D. 19\_\_

-----  
v.  
-----

Employer's Petition for lump sum  
payment under the Workmen's  
Compensation Law.

To the Honorable Judge (or Judges) of the said Court:

Your petitioner respectfully represents that he is engaged in the business or occupation of\_\_\_\_\_, in the City of\_\_\_\_\_ and the county and state aforesaid; that on the\_\_\_\_day of\_\_\_\_, 19\_\_, one\_\_\_\_\_, the defendant herein, was employed by your peti-

<sup>17</sup> The compensation, or any part of it, provided for by the act may be paid in a lump sum when so ordered by a court of competent jurisdiction of the county in which the employé resided or worked at the time of his disability or death. A petition may be presented, as well by the employer as by the employé, asking that the compensation be so paid. If the proper notice is given to the interested parties and a proper showing is made before the court and it appears to be to the best interests of the parties that the compensation be so paid, it is the duty of the court to order the payment to be made in a lump sum. Workmen's Compensation Law, § 5½.

If the employer desires to pay only a part of the compensation in a lump sum, change the paragraph next to the last so as to read: "Your petitioner further represents that a proper notice of this proceeding has been given to the interested parties and that it is to the best interests of the said parties that the sum of\_\_\_\_\_ dollars, being a part of the aforesaid total sum of\_\_\_\_\_ dollars to which the said\_\_\_\_\_, defendant herein, is entitled, be paid to the said\_\_\_\_\_, defendant herein, in a lump sum." And change the last paragraph so as to read: "Your petitioner therefore respectfully prays that the said sum of\_\_\_\_\_ dollars, being a part as aforesaid of the said total sum of\_\_\_\_\_ dollars to which the said\_\_\_\_\_, defendant herein, is entitled,

tioner, in the capacity of-----, at a certain specified rate of compensation, to-wit: the rate of-----dollars per week (or month or as the case may be), and that he, the said----- continued in the employ of your petitioner up to and including the day on which the injury hereinafter mentioned was sustained and still is so employed.

Your petitioner further represents that the business or occupation in which he, your petitioner, was at the time of the said injury and still is engaged was and is the aforesaid business or occupation of-----; that such business or occupation is comprehended within the scope and meaning of an act of the general assembly of the State of Illinois entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912; and that he, your petitioner, was at the time of the injury aforesaid and still is operating and conducting his said business or occupation under the said act and subject to the provisions thereof; and that the said-----, defendant herein, was engaged in work and labor as aforesaid under the said act and subject to the provisions thereof.

Your petitioner further represents that during the period of the said employment of the said-----, defendant herein, by your petitioner, to-wit: on the-----day of-----, 19--, he, the said-----, defendant herein, met with an injury arising out of

-----  
bc paid to the said-----, defendant herein, in a lump sum," etc.

If a part of the compensation has been paid in instalments, change the paragraph commencing, "Your petitioner further represents that the amount of compensation to which the said-----, defendant herein, was entitled," etc., to read: "Your petitioner further represents that the amount of compensation to which the said-----, defendant herein, was entitled when the nature of his injury was definitely determined was the sum of-----dollars, and that your petitioner, pursuant to his duty under and by virtue of the act of the general assembly aforesaid, has made the following compensation payments to him, the said-----, defendant herein, to-wit: The sum of-----dollars on the -----day of-----, 19--, and the like sum of-----dollars on each and every week thereafter for and during a period of-----months (or weeks) from and after the said-----day of-----, 19--, and that the difference between the sum of the said payments so received by the said-----, defendant herein, and the compensation to which he, the said-----, defendant herein, was entitled when the nature of the aforesaid injury was definitely determined is the sum of-----dollars, and that the said-----, defendant herein, is now entitled to receive the said last-mentioned sum of-----dollars."

and in the course of his said employment; and that the nature, character and cause of the said injury were as follows:-----

(Here insert brief description, in simple language, of the nature and cause of the accident and resulting injury.)

Your petitioner further represents that the injury aforesaid has caused (or will cause, as the case may be) permanent disability (or temporary disability, as the case may be), in this, to-wit: that he, the said-----, defendant herein, as a direct result thereof, has sustained----- (here state the nature of the injury).

Your petitioner further represents that the amount of compensation to which the said-----, defendant herein, was entitled when the nature of his injury was definitely determined was the sum of-----dollars; and that no part thereof has been paid to him by your petitioner.

Your petitioner further represents that a proper notice of this proceeding has been given to the interested parties, and that it is to the best interests of the said parties that the said last-mentioned sum of-----dollars be paid to the said-----, defendant herein, in a lump sum.

Your petitioner therefore respectfully prays that the said last-mentioned sum of-----dollars be paid to the said-----, defendant herein, in a lump sum and that your honor (or your honors), by order of this honorable court, direct and require the said-----, defendant herein, to accept and receive the said sum of-----dollars so paid in a lump sum payment as aforesaid, in full satisfaction and discharge of your petitioner's liability; and that your honor (or your honors) may grant such other and further relief in the premises as may be equitable.

### § 346. Form of employer's petition for the appointment of a guardian, conservator or administrator. (r)<sup>18</sup>

<sup>18</sup>Where the necessity exists and the proper application is made, a guardian, conservator or administrator must be appointed for any person under disability who is entitled to compensation under the act. An employer bound by the terms of the act and liable to pay such compensation may petition for such appointment where no legal representatives have been appointed or are acting for the person under disability. Workmen's Compensation Law, § 5½.

In the case of a petition for the appointment of an administrator, change the paragraph commencing, "Your petitioner further represents that, during the period of the said employment," etc., so as to read: "Your petitioner further represents that, during the period of the said employment of the said----- (name of employé) by your petitioner, to-wit: on the-----day of

State of Illinois }  
 ----- County. } ss.

In the ----- Court.  
 To the ----- Term, A. D. 19--.

In the Matter of the  
 Estate of  
 -----

Employer's petition for the ap-  
 pointment of a guardian (or con-  
 servator or administrator) un-  
 der the Workmen's Compensa-  
 tion Law.

To the Honorable Judge of the said Court:

Your petitioner respectfully represents that he is engaged in the business or occupation of -----, in the City of ----- and the county and state aforesaid, and that one -----, at the time of the injury (or fatal injury) hereinafter mentioned, was in the employ of your petitioner.

Your petitioner further represents that the business or occupation in which he, your petitioner, was at the time of the said injury (or said fatal injury) and still is engaged was and is a business or occupation comprehended within the scope and meaning of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912; and that your petitioner was at the time of the injury (or fatal injury) aforesaid and still is operating and conducting his said business or occupation under the said act and subject to the provisions thereof, and that the said ----- (name of employé) was engaged in work and labor as aforesaid under the said act and subject to the provisions thereof.

Your petitioner further represents that, during the period of the -----, 19--, he, the said ----- (name of employé), met with an injury arising out of and in the course of his said employment, the said injury afterward, to-wit: on the ----- day of -----, 19--, producing the death of the said ----- (name of employé), and that in consequence thereof your petitioner is made liable by law to pay compensation to the said ----- (name of employé) in the manner and upon the terms specified in the act of the general assembly aforesaid." And change the paragraph next to the last so as to read: "Your petitioner further represents that it is to the best interests of the parties hereto that an administrator be appointed to administer the estate of the said ----- (name of employé) in order that compensation payments may be made by your petitioner in the proper manner and to the proper person.

said employment of the said\_\_\_\_\_ (name of employé) by your petitioner, to-wit: on the\_\_\_\_\_ day of\_\_\_\_\_, 19\_\_\_\_, he, the said\_\_\_\_\_ (name of employé), met with an injury arising out of and in the course of his said employment and that in consequence thereof your petitioner is made liable by law to pay compensation to the said\_\_\_\_\_ (name of employé) in the manner and upon the terms specified in the act of the general assembly aforesaid.

Your petitioner further represents that the said\_\_\_\_\_ (name of injured employé) is a minor of the age of\_\_\_\_\_ years (or is a person of unsound mind or as the case may be); that no legal representative has been appointed or is acting for him, the said\_\_\_\_\_ (name of injured employé); and that it is to the best interests of the parties that a guardian (or conservator) be appointed for the said\_\_\_\_\_ (name of employé) in order that compensation payments may be made by your petitioner in the proper manner and to the proper person.

Your petitioner therefore respectfully prays that your honor appoint a suitable and competent person as guardian (or conservator) of the said\_\_\_\_\_ (name of employé) to whom your petitioner may pay the compensation provided for by the act of the general assembly aforesaid and discharge himself from further liability thereunder.

§ 347. Form of employé's petition for the appointment of a third arbitrator. (s)<sup>19</sup>

State of Illinois }  
 \_\_\_\_\_ County } ss.

In the\_\_\_\_\_ Court.  
 To the\_\_\_\_\_ Term, A. D. 19\_\_\_\_

\_\_\_\_\_  
 v.  
 \_\_\_\_\_

Petition for appointment of arbitrator under the Workmen's Compensation Law.

To the Honorable Judge (or Judges) of the said Court:

Your petitioner respectfully represents that his occupation is, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.

Your petitioner further represents that the business or occupa-

<sup>19</sup>Any question of law or fact arising in regard to the application of the act in determining the compensation is to be decided either by agreement of the parties or by arbitration. If any question arises that cannot be settled by agreement, the employer and the employé must each select a disinterested arbitrator and the

tion in which, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that during the period of his said employment, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that the injury aforesaid has caused, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that the amount of compensation to which he was entitled, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that certain questions of fact (or certain questions of law or certain questions of law and fact) have arisen in regard to the application of the act of the general assembly aforesaid in determining the compensation payable thereunder; that such questions cannot be settled by agreement of the parties; and that, pursuant to the provisions of the said act, your petitioner has appointed a disinterested party, to-wit: \_\_\_\_\_ of \_\_\_\_\_ as his arbitrator, and the said \_\_\_\_\_, defend-

third is to be appointed by the judge of the county court or other court of competent jurisdiction of the county where the injured employé resided or worked at the time of the injury. Workmen's Compensation Law, § 10.

It is the duty of the employer and the employé to submit to the board of arbitrators, not later than ten days after the appointment of the board, all facts or evidence in their possession or under their control relating to the questions to be determined. The board is to hear all the evidence submitted by both parties and is to have access to any books, papers or records of employer or employé showing any material facts. The arbitrators are empowered to visit the place where the accident occurred, to direct the injured employé to be examined by a surgeon and to do all other acts reasonably necessary for a proper investigation. Workmen's Compensation Law, § 10.

A copy of the report of the arbitrators must be prepared by them in each case and filed with the State Bureau of Labor Statistics. Except for fraud or mistake, it will be binding upon both the employer and the employé. Workmen's Compensation Law, § 10.

Within twenty days after the arbitrators have filed their report with the state bureau, either party may appeal to the circuit court or to the court that appointed the third arbitrator of the county where the injured occurred. Workmen's Compensation Law, § 10.

ant herein, has appointed a disinterested party, to-wit: \_\_\_\_\_ of \_\_\_\_\_ as his (or its) arbitrator, for the purpose of constituting, together with a third disinterested party to be appointed by your honor, a board of arbitrators to hear and determine all such disputed questions of fact (or of law or of law and fact) arising in regard to the application of the act of the general assembly aforesaid in determining the compensation payable thereunder.

Your petitioner therefore respectfully prays that your honor appoint a third disinterested party, pursuant to the act of the general assembly aforesaid, in order that such disinterested third party, together with the two arbitrators hereinbefore mentioned may constitute a board of arbitrators for the purpose of hearing and determining all such disputed questions of fact (or of law or of law and fact) arising in regard to the application of the act of the general assembly aforesaid in determining the compensation payable thereunder.

§ 348. Form of report of board of arbitrators. (t)<sup>20</sup>

State of Illinois }  
\_\_\_\_\_ County } ss.

In the \_\_\_\_\_ Court.  
To the \_\_\_\_\_ Term, A. D. 19\_\_.

-----  
v.  
-----

Report of Board of Arbitrators,  
under the Workmen's Compen-  
sation Law.

Know all men by these presents that we, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, constituting a board of arbitrators for the purpose of hearing and determining all disputed questions of fact (or disputed questions of law or disputed questions of law

<sup>20</sup>It is the duty of the employer and the employé to submit to the board of arbitrators, not later than ten days after the appointment of the board, all facts or evidence in their possession or under their control relating to the questions to be determined. The board is to hear all the evidence submitted by both parties and is to have access to any books, papers or records of employer or employé showing any material facts. The arbitrators are empowered to visit the place where the accident occurred, to direct the injured employé to be examined by a surgeon and to do all other acts reasonably necessary for a proper investigation. Workmen's Compensation Law, § 10.

A copy of the report of the arbitrators must be prepared by them in each case and filed with the state bureau of labor statistics. Except for fraud or mistake, it will be binding upon both the employer and the employé. Workmen's Compensation Law, § 10.



and fact) arising in regard to the application of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, in determining the compensation payable thereunder, duly empowered and authorized to act under and by virtue of the act of the general assembly aforesaid and under and by virtue of an order of the said court entered in the above entitled cause on the-----day of -----, 19--, do declare and publish that, not later than ten days after our appointment as a board, all facts or evidence in the possession or under the control of the parties hereto, relating to the questions to be determined, were submitted to us by the aforesaid parties; that we have heard all the evidence submitted by both parties and have had access to all books, papers and records of the said parties showing any material facts; that we have visited the place where the accident occurred, have directed the said-----, the injured employé, to be examined by a surgeon and have done all other acts reasonably necessary to a proper investigation of the said disputed questions; and being fully advised in relation to the premises we do make, publish and declare our award as follows, to-wit:

We do hereby find that-----

(Here insert the findings of the board.)

In witness whereof, we have hereunto set our hands this-----day of-----, 19--.

-----  
-----  
-----

### § 349. Form of petition appealing from award made by board of arbitrators. (u)<sup>21</sup>

State of Illinois }  
----- County } ss.

In the-----Court.  
To the-----Term, A. D. 19--.

-----  
v.  
-----

Appeal from award of Board of Arbitrators, under the Workmen's Compensation Law.

To the Honorable Judge (or Judges) of said Court:

Your petitioner respectfully represents that, by virtue of an

<sup>21</sup>Within twenty days after the arbitrators have filed their report

order duly entered by this honorable court (or by the\_\_\_\_\_ court of the county aforesaid), on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_\_\_, in the matter of a petition filed by\_\_\_\_\_, under the authority and provisions of an act of the general assembly of the State of Illinois, entitled, "An act to promote the general welfare of the people of this state, by providing compensation for accidental injuries or death suffered in the course of employment," approved June 10, 1911, in force May 1, 1912, a disinterested party, to-wit: \_\_\_\_\_of\_\_\_\_\_, was appointed by this honorable court (or by the\_\_\_\_\_court of the county aforesaid), for the purpose of constituting, together with two other disinterested parties, to-wit: \_\_\_\_\_of\_\_\_\_\_and\_\_\_\_\_of\_\_\_\_\_, appointed by the parties to the petition aforesaid, a board of arbitrators to hear and determine all disputed questions of fact (or of law or of law and fact) arising in regard to the application of the act of the general assembly aforesaid in determining the compensation payable thereunder.

Your petitioner further represents that the said board of arbitrators, on the\_\_\_\_\_day of\_\_\_\_\_, 19\_\_\_\_, made, published and declared their finding and award as follows, to-wit:

-----  
-----  
-----

(Here insert text of the award.)

Your petitioner further represents that the aforesaid finding and award of the said board of arbitrators is incorrect and erroneous (or is fraudulent) and that the said finding and award should have been of a wholly different character.

Your petitioner therefore respectfully prays that an appeal may be allowed to this honorable court from the finding and award aforesaid and that the said questions in dispute may be tried de novo.

### § 350. Form of bond to be filed upon an appeal from an award made by board of arbitrators. (v)<sup>22</sup>

with the state bureau of labor statistics, either party may appeal to the circuit court or to the court that appointed the third arbitrator of the county where the injury occurred. A petition must be filed and with it a good and sufficient bond, in the discretion of the court. Upon such appeal, the questions in dispute are to be tried de novo and either party may have a jury upon filing with his petition a written demand therefor. Workmen's Compensation Law, § 10.

<sup>22</sup>Within twenty days after the arbitrators have filed their report with the State Bureau of Labor Statistics, either party may appeal to the circuit court or the court that appointed the third arbitrator of the county where the injury occurred. A petition must be filed

State of Illinois }  
 ----- County } ss.

In the ----- Court.  
 To the ----- Term, A. D. 19---

-----  
 v.  
 -----

### Appeal Bond.

Know all men by these presents that we, -----, principal, and ----- and -----, sureties, are held and firmly bound unto -----, in the penal sum of ----- dollars, to the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, firmly by these presents.

The condition of this obligation is such that, whereas the above-bounden ----- has prayed an appeal from the finding and award of the board of arbitrators in the above entitled cause to the ----- court of the county aforesaid:

Now, therefore, if the said above-bounden ----- shall prosecute the said appeal with effect and pay to the said ----- without delay all damages, costs and expenses that may be incurred by the said ----- by reason and in case of the dismissal of the said appeal, then this obligation to be void; otherwise to remain in full force and virtue.

----- Seal.  
 ----- Seal.  
 ----- Seal.

### § 351. Form of demand for a jury upon an appeal from an award made by board of arbitrators. (w)<sup>23</sup>

State of Illinois }  
 ----- County } ss.

In the ----- Court.  
 To the ----- Term, A. D. 19---

-----  
 v.  
 -----

### Demand for a Jury.

The undersigned hereby demands a jury for a trial of the questions and issues involved in the above entitled cause.

-----  
 and with it a good and sufficient bond, in the discretion of the court. Workmen's Compensation Law, § 10.

<sup>23</sup>Where an appeal is taken from an award made by a board of arbitrators, either party may have a jury upon filing with his petition a written demand therefor. Workmen's Compensation Law, § 10.

§ 352. Form of petition for the appointment of a third medical practitioner or surgeon for the purpose of determining the nature of the employé's injury. (x)<sup>24</sup>

State of Illinois }  
 ----- County } ss.

In the-----Court.  
 To the-----Term, A. D. 19---

-----  
 v.  
 -----

Petition for the appointment of an  
 examiner, under the Workmen's  
 Compensation Law.

To the Honorable Judge (or Judges) of the said court:

Your petitioner respectfully represents that his occupation is, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that the business or occupation in which, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that during the period of his

---

<sup>24</sup>When an employé is injured, he may be required, if the employer so desires, for the purpose of determining the basis of compensation, to submit to medical examinations at the latter's expense. The medical examiner in such case is to be selected by the employer. But the workman may have the examinations made in the presence of his own physician and surgeon, appointed and paid for by him. If the two surgeons disagree, they are empowered to name a third, or if they are unable to agree upon a choice, the judge of the county court of the county where the employé resided or was employed at the time of the injury is to make the selection. In the last-mentioned event, however, a petition must be filed in court for that purpose. Workmen's Compensation Law, § 9.

The judge is required to name the third examiner within six days after the petition is filed. Workmen's Compensation Law, § 9.

A majority report of the three practitioners is to be used as the basis of estimating the injured employé's compensation. Workmen's Compensation Law, § 9.

If the workman refuses to submit to such examinations or unnecessarily obstructs them, his right to compensation payments will be suspended until the examinations are made. Workmen's Compensation Law, § 9.

said employment, etc. (Continue as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that, pursuant to the act of the general assembly aforesaid, a duly qualified medical practitioner or surgeon, to-wit: \_\_\_\_\_ of \_\_\_\_\_, was appointed by the said \_\_\_\_\_ (name of employer), for the purpose of making an examination of the said \_\_\_\_\_ (name of employé) in order to determine the nature, extent and probable duration of the said injury and for the purpose of adjusting the compensation which may be due the said \_\_\_\_\_ (name of employé) from time to time for such disability occasioned as aforesaid; that a second duly qualified medical practitioner or surgeon, to-wit: \_\_\_\_\_ of \_\_\_\_\_, was appointed by the said \_\_\_\_\_ (name of employé) for the purpose of assisting in and being present at the medical or surgical examination aforesaid; and that the two medical practitioners or surgeons aforesaid have disagreed as to the nature, extent and probable duration of the said injury or disability and, further, are unable to agree upon the selection of a third medical practitioner or surgeon.

Your petitioner therefore respectfully prays that, pursuant to the provisions of the act of the general assembly aforesaid, your honor appoint, within six days from the date of the filing of this petition, a third medical practitioner or surgeon, in order that a majority report of the said three medical practitioners or surgeons may be used for the purpose of estimating the amount of compensation payable under the act of the general assembly aforesaid.

### § 353. Form of petition for the review of an agreement or award. (y)<sup>25</sup>

State of Illinois }  
 \_\_\_\_\_ County } ss.

In the \_\_\_\_\_ Court.  
 To the \_\_\_\_\_ Term, A. D. 19\_\_.

-----  
 v.  
 -----

Petition for the Review of an  
 award (or an agreement) under  
 the Workmen's Compensation  
 Law.

To the Honorable Judge (or Judges) of the said Court:

Your petitioner respectfully represents that his occupation is, etc. (Continue to the end of the paragraph as in form for Em-

<sup>25</sup>An agreement or award may, at any time after six months and before eighteen months from the date of filing, be reviewed, upon the application of either party, on the ground that the incapacity of the

ployé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that the business or occupation in which, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that during the period of his said employment, etc. (Continue to the end of the paragraph as in form for Employé's Petition for lump sum payment in lieu of instalment payments.)

Your petitioner further represents that certain questions of fact (or certain questions of law or certain questions of law and fact) arose in regard to the application of the act of the general assembly aforesaid in determining the compensation payable thereunder; that such questions could not be settled by agreement of the parties; that, pursuant to the provisions of the said act, your petitioner appointed a disinterested party, to-wit: \_\_\_\_\_ of \_\_\_\_\_ as his arbitrator, and the said \_\_\_\_\_ (name of the other party, employer or employé) appointed a disinterested party, to-wit: \_\_\_\_\_ of \_\_\_\_\_ as his (or its) arbitrator, and this honorable court (or the \_\_\_\_\_ court of the county aforesaid), on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by an order duly entered of record, appointed a third disinterested party, to-wit: \_\_\_\_\_ of \_\_\_\_\_, for the purpose of constituting, together, a board of arbitrators for the purpose of hearing and determining all disputed questions of fact (or of law or of law and fact) arising in regard to the application of the act of the general assembly aforesaid in determining the compensation payable thereunder.

Your petitioner further represents that the said board of arbitrators, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, made, published and declared their finding and award as follows, to-wit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Here insert text of the award.)

Your petitioner further represents that, since the date of the \_\_\_\_\_ employé has subsequently increased or diminished. Workmen's Compensation Law, § 18.

The application is to be made to any court of competent jurisdiction. Workmen's Compensation Law, § 18.

Unless the parties consent to arbitration, the court may appoint a medical practitioner to examine the employé and report upon his condition. Workmen's Compensation Act, § 18.

Upon the report of the medical examiner and upon hearing all the evidence, the court may modify the agreement or award, as may be just, by ending, increasing or diminishing the compensation, subject to the limitations provided by the act. Workmen's Compensation Law, § 18.

finding and award by the board of arbitrators aforesaid, the incapacity or disability of the said\_\_\_\_\_ (name of employé) has increased (or diminished, as the case may be), in this, to-wit:

-----

-----

(Here insert statement showing in what manner and to what extent the incapacity has increased or diminished); and that the said finding and award, in consequence of the premises, is not now suited or adapted to the needs of the said\_\_\_\_\_ (name of employé) and is not responsive to the spirit and intent of the provisions of the act of the general assembly aforesaid.

Your petitioner therefore respectfully prays that your honor will appoint a competent medical practitioner or surgeon to examine the said\_\_\_\_\_ (name of employé) and report upon the condition of the said\_\_\_\_\_ (name of employé), and that such award may be modified in such manner and to such extent as may be just; and that your honor may grant such other and further relief in the premises as may be equitable.

4

8  
9  
10  
11  
12

13

14  
15  
16  
17

18  
19  
20  
21  
22

23  
24

25  
26  
27  
28



## CHAPTER XX.

### THE MICHIGAN WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
354. Nature and scope of act.	361. Form of notice of employé upon entering employment that he elects not to be subject to act. (c)
355. Text of the Michigan Workmen's Compensation act.	362. Form of notice by employé that he elects to be subject to provisions of act. (d)
356. Letter of instructions to employers.	363. Form of notice to employer of claim for injury. (e)
357. Form of employer's notice to employés that he accepts provisions of act.	364. Form of first report of accident by employer. (f)
358. Formal procedure—List of forms.	365. Form of supplementary report of accident by employer. (g)
359. Form of employer's written acceptance. (a)	
360. Form of employer's notice of withdrawal from operation of acts. (b)	

§ 354. Nature and scope of act.—Compensation is allowed for all injuries to workmen without regard to negligence except where such negligence is wilful. The employer is denied the common-law defenses. Fifty per cent of the earnings of the employé are paid to him during disability after the third week. If disability continues for eight weeks or longer, compensation shall be computed from the date of the injury. In case of total disability the compensation runs for 500 weeks if the total disability lasts so long with a maximum of \$10 and minimum of \$4 compensation per week but in no case may the compensation amount to more than \$4,000. The compensation to be paid direct heirs of a workman killed is the same except that the weekly compensation runs only for 300 weeks and in no case is to exceed \$3,000. Compensation to be paid indirect heirs, on account of funeral expenses and surgeon and hospital bills,

and for injuries causing partial disability, is carefully provided for in the law. The law is compulsory as to the State, and counties, cities, incorporated villages, townships and school districts, and all employés of the State and of such municipalities, but this does not include employés of contractors engaged in performing work of the State or any such municipality.

It is optional as to all private employers, including public service corporations, and their employes, except that it contains a qualifying section governing employers and workmen engaged in interstate commerce.

The law does not apply to employés in agricultural and domestic service, neither is it applicable to those employers who elect, with the approval of the Industrial Accident Board, to pay compensation in the manner and to the extent provided by law; nor will such employer be subject to any other liability whatsoever, save as provided by this law for death or personal injury to employés.

The act gives to every member the option, subject to the approval of the Industrial Accident Board, to carry his own risk if he can satisfy the board of his financial ability to do so; or to insure in any employers' liability insurance company authorized to take risks in Michigan; or to insure in any employers' mutual association for the organization of which provision is made in this law; or to request the Commissioner of Insurance to assume the administration of the collection and disbursement of such funds.

The law provides for the adjustment of claims for compensation by agreement of the parties, or by a board of arbitration, or by a judgment of a superior court of proper jurisdiction on petition of party in interest.

Weekly payments made under the act may be reviewed by the Industrial Accident Board at the request of the employer, or the insurance company carrying such risks or the commissioner of insurance as the case

may be, or of the employé; and on such review it may be ended, diminished or increased, subject to the maximum and minimum amounts provided in the scales of compensations, if the board finds that the facts warrant such action.

Appeals from agreements, awards, judgments and rulings of the Industrial Accident Board to the superior courts and the Supreme court are allowed.

Compensations payable under the act can not be assigned, attached or garnisheed and are made a first lien against all the property of the employer except for wages and for taxes.

**§ 355. Text of the Michigan workmen's compensation act.**—The statute is divided into six parts and became effective September 1, 1912.

#### PART I—MODIFICATION OF REMEDIES.

Sec. 1. In an action to recover damages for personal injury sustained by an employé in the course of his employment, or for death resulting from personal injuries so sustained, it shall not be a defense:

(a) That the employé was negligent, unless and except it shall appear that such negligence was wilful;

(b) That the injury was caused by the negligence of a fellow employé;

(c) That the employé had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.

Sec. 2. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by household domestic servants and farm laborers.

Sec. 3. The provisions of section one shall not apply to actions to recover damages for the death of, or for personal injuries sustained by employés of any employer who has elected, with the approval of the indus-

trial accident board hereinafter created, to pay compensation in the manner and to the extent hereinafter provided.

Sec. 4. Any employer who has elected, with the approval of the industrial accident board hereinafter created, to pay compensation as hereinafter provided, shall not be subject to the provisions of section one; nor shall such employer be subject to any other liability whatsoever, save as herein provided for the death of or personal injury to any employe, for which death or injury compensation is recoverable under this act, except as to employes who have elected in the manner hereinafter provided not to become subject to the provisions of this act.

Sec. 5. The following shall constitute employers subject to the provisions of this act:

1. The state and each county, city, township, incorporated village and school district therein;

2. Every person, firm and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employe for which compensation under this act may be claimed, shall in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in the next section.

Sec. 6. Such election on the part of the employers mentioned in subdivision two of the preceding section, shall be made by filing with the industrial accident board hereinafter provided for, a written statement to the effect that such employer accepts the provisions of this act, and that he adopts, subject to the approval of said board, one of the four methods provided for the payment of the compensation hereinafter specified. The filing of such statement and the approval of said board shall operate, within the meaning of the preceding sec-

tion, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least thirty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this act: Provided, however, That such employer so electing to become subject to the provisions of this act shall, within ten days after the approval by said board of his election filed as aforesaid, post in a conspicuous place in his plant, shop, mine or place of work, or if such employer be a transportation company, at its several stations and docks, notice in the form as prescribed and furnished by the industrial accident board to the effect that he accepts and will be bound by the provisions of this act.

Sec. 7. The term "employé" as used in this act shall be construed to mean:

1. Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city, township, incorporated village or school district therein: Provided, That one employed by a contractor who has contracted with a county, city, township, incorporated village, school district or the state, through its representatives, shall not be considered an employé of the state, county, city, township, incorporated village or school district which made the contract:

2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state who, for

the purposes of this act, shall be considered the same and have the same power to contract as adult employés, but not including any person whose employment is but casual or is not in the usual course of the trade, business, profession or occupation of his employer.

Sec. 8. Any employé as defined in subdivision one of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employé as defined in subdivision two of the preceding section shall be deemed to have accepted and shall be subject to the provisions of this act and of any act amendatory thereof if, at the time of the accident upon which liability is claimed:

1. The employer charged with such liability is subject to the provisions of this act, whether the employé has actual notice thereof or not; and

2. Such employé shall not, at the time of entering into his contract of hire, express or implied, with such employer, have given to his employer notice in writing that he elects not to be subject to the provisions of this act; or, in the event that such contract of hire was made before such employer became subject to the provisions of this act, such employé shall have given to his employer notice in writing that he elects not to be subject to such provisions, or without giving either of such notices shall have remained in the service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act. An employé who has given notice to his employer in writing as aforesaid that he elects not to be subject to the provisions of this act, may waive such claim by a notice in writing, which shall take effect five days after it is delivered to the employer or his agent.

#### PART II—COMPENSATION.

Sec. 1. If an employé who has not given notice of his election not to be subject to the provisions of this act, as provided in part one, section eight, or who has

given such notice and has waived the same as hereinbefore provided, receives a personal injury arising out of and in the course of his employment by an employer who is at the time of such injury subject to the provisions of this act, he shall be paid compensation in the manner and to the extent hereinafter provided, or in case of his death resulting from such injuries such compensation shall be paid to his dependents as hereinafter defined.

Sec. 2. If the employé is injured by reason of his intentional and wilful misconduct, he shall not receive compensation under the provisions of this act.

Sec. 3. No compensation shall be paid under this act for any injury which does not incapacitate the employé for a period of at least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury: Provided, however, That if such disability continues for eight weeks or longer, such compensation shall be computed from the date of the injury.

Sec. 4. During the first three weeks after the injury the employer shall furnish, or cause to be furnished, reasonable medical and hospital services and medicines when they are needed.

Sec. 5. If death results from the injury, the employer shall pay, or cause to be paid, subject, however, to the provisions of section twelve hereof, in one of the methods hereinafter provided, to the dependents of the employé, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week for a period of three hundred weeks from the date of the injury. If the employé leaves dependents only partly dependent upon his earnings for support at the time of his injury, the weekly compensation to be paid as aforesaid shall be equal to the same proportion of the weekly payments

for the benefit of persons wholly dependent as the amount contributed by the employé to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employé before his death the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury.

Sec. 6. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

(a) A wife upon a husband with whom she lives at the time of his death;

(b) A husband upon a wife with whom he lives at the time of her death;

(c) A child or children under the age of sixteen years (or over said age, if physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent, unless a member of the family of the deceased employé, or bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother, or sister.

Sec. 7. Questions as to who constitute dependents



and the extent of their dependency shall be determined as of the date of the accident to the employé, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions; and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto, or their legal guardians or trustees. In case of the death of one such dependent his proportion of such compensation shall be payable to the surviving dependents pro rata. Upon the death of all such dependents compensation shall cease. No person shall be excluded as a dependent who is a non-resident alien. No dependent of an injured employé shall be deemed, during the life of such employé, a party in interest to any proceeding by him for the enforcement of collection of any claim for compensation, nor as respects the compromise thereof by such employé.

Sec. 8. If the employé leaves no dependents the employer shall pay, or cause to be paid as hereinafter provided, the reasonable expense of his last sickness and burying, which shall not exceed two hundred dollars.

Sec. 9. While the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid as hereinafter provided, to the injured employé a weekly compensation equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor shall the total amount of all compensation exceed four thousand dollars.

Sec. 10. While the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid as hereinafter provided, to the injured employé a weekly compensation equal to one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to

earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury. In cases included by the following schedule the disability in each such case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be as specified therein, to-wit:

For the loss of a thumb, fifty per centum of the average weekly wages during sixty weeks;

For the loss of a first finger, commonly called index finger, fifty per centum of average weekly wages during thirty-five weeks;

For the loss of a second finger, fifty per centum of average weekly wages during thirty weeks;

For the loss of a third finger, fifty per centum of average weekly wages during twenty weeks;

For the loss of a fourth finger, commonly called little finger, fifty per centum of average weekly wages during fifteen weeks;

The loss of the first phalange of the thumb, or of any finger, shall, be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified;

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb: Provided, however, That in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

For the loss of a great toe, fifty per centum of average weekly wages during thirty weeks;

For the loss of one of the toes other than a great toe, fifty per centum of average weekly wages during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe,

and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe;

For the loss of a hand, fifty per centum of average weekly wages during one hundred and fifty weeks.

For the loss of an arm, fifty per centum of average weekly wages during two hundred weeks;

For the loss of a foot, fifty per centum of average weekly wages during one hundred and twenty-five weeks;

For the loss of a leg, fifty per centum of average weekly wages during one hundred and seventy-five weeks;

For the loss of an eye, fifty per centum of average weekly wages during one hundred weeks;

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability, to be compensated according to the provisions of section nine.

The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated.

Sec. 11. The term "average weekly wages" as used in this act is defined to be one fifty-second part of the average annual earnings of the employé. If the injured employé has not worked in the employment in which he was working at the time of the accident, whether for the employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned in such employment during the days when so employed. If the injured employé has not worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average

daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place, shall have earned in such employment during the days when so employed. In cases where the foregoing methods of arriving at the average annual earnings of the injured employé cannot reasonably and fairly be applied, such annual earnings shall be taken at such sum as, having regard to the previous earnings of the injured employé, and of other employés of the same or most similar class, working in the same or most similar employment, in the same or neighboring locality, shall reasonably represent the annual earning capacity of the injured employé at the time of the accident in the employment in which he was working at such time. The fact that an employé has suffered a previous disability, or received compensation therefor, shall not preclude compensation for a later injury, or for death, but in determining compensation for the later injury, or death, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of the provisions of this section. The weekly loss in wages referred to in this act shall consist of such percentage of the average weekly earnings of the injured employé, computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the accident, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

Sec. 12. The death of the injured employé prior to the expiration of the period within which he would

receive such weekly payments shall be deemed to end such disability, and all liability for the remainder of such payments which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity:

If the injury so received by such employé was the proximate cause of his death, and such deceased employé leaves dependents, as hereinbefore specified, wholly or partially dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which shall at the time of death have been paid or become payable under the provisions of this act to such deceased employé, to make the total compensation for the injury and death exclusive of medical and hospital services and medicines furnished as provided in section four hereof, equal to the full amount which such dependents would have been entitled to receive under the provisions of section five hereof in case the accident had resulted in immediate death, and such benefits shall be payable in weekly installments in the same manner and subject to the same terms and conditions in all respects as payments made under the provisions of said section five.

Sec. 13. No savings or insurance of the injured employé, nor any contribution made by him to any benefit fund or protective association independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than those paid or caused to be paid by the employer as herein provided, be considered in fixing the compensation under this act.

Sec. 14. If an injured employé is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

Sec. 15. No proceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury shall have been given to the employer three months after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employé, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

Sec. 16. The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury; and shall be signed by the person injured, or by person in his behalf, or, in the event of his death, by his dependents or by a person in their behalf.

Sec. 17. The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering said notice to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

Sec. 18. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead, and the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under this act, if it be shown that the employer had notice or knowledge of the injury.

Sec. 19. After an employé has given notice of an injury, as provided by this act, and from time to time thereafter during the continuance of his disability, he

shall, if so requested by the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be. The employé shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited. Any physician who shall make or be present at any such examination may be required to testify under oath as to the results thereof.

Sec. 20. No agreement by an employé to waive his rights to compensation under this act shall be valid.

Sec. 21. No payment under this act shall be assignable or subject to attachment or garnishment, or be held liable in any way for any debts. In case of insolvency every liability for compensation under this act shall constitute a first lien upon all the property of the employer liable therefor, paramount to all other claims or liens except for wages and taxes, and such liens shall be enforced by order of the court.

Sec. 22. Whenever any weekly payment has been continued for not less than six months, the liability therefor may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the industrial accident board, and said board may at any time direct in any case, if special circumstances be found which in its judgment require the same, that the deferred payments be commuted on the present worth thereof at five per cent per annum to one or more lump sum payments, and that such payments shall be made by the employer or the insurance company carry-

ing such risk, or commissioner of insurance, as the case may be.

#### PART III—PROCEDURE.

Sec. 1. There is hereby created a board which shall be known as the Industrial Accident Board, consisting of three members to be appointed by the governor, by and with the consent of the senate, one of whom shall be designated by the governor as chairman. Appointments to fill vacancies may be made during recesses of the senate, but shall be subject to confirmation by the senate at the next ensuing session of the legislature. The term of office of members of this board shall be six years, except that when first constituted one member shall be appointed for two years, one for four years, and one for six years. Thereafter one member shall be appointed every second year for the full term of six years. No more than two members of this board shall belong to the same political party.

Sec. 2. The salary of each of the members so appointed by the governor shall be three thousand five hundred dollars per year. The board may appoint a secretary at a salary of not more than two thousand five hundred dollars a year, and may remove him. The board shall be provided with an office in the capitol, or in some other suitable building in the city of Lansing, in which its records shall be kept, and it shall also be provided with necessary office furniture, stationery and other supplies. It shall provide itself with a seal for the authentication of its orders, awards and proceedings, upon which shall be inscribed the words "Industrial Accident Board—Michigan—Seal." It shall employ such assistants and clerical help as it may deem necessary and fix the compensation of all persons so employed: Provided, That the average compensation paid to such employé shall not exceed one thousand dollars per annum for each person employed, and all such clerical assistants shall be subject to existing laws



regulating the grading and compensation of department clerks. The members of the board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board; but such expenses shall be sworn to by the person who incurred the same, and be approved by the chairman of the board before payment is made.

All such salaries and expenses when audited and allowed by the board of state auditors, shall be paid by the state treasurer out of the general fund, upon warrant of the auditor general.

Sec. 3. The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The board or any member thereof shall have the power to administer oaths, subpoena witnesses and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

Sec. 4. The board shall cause to be printed and furnish free of charge to any employer or employé such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of any employer who shall file a statement of election under this act, and the date of the filing thereof and its approval by such board, and a separate book in which shall be entered and indexed the name of every employer who shall file his notice of withdrawal of said election, and the date of the filing thereof; and books in which shall be recorded all orders and awards made by the board; and such other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause

such notice of the fact to be given by requiring said employer to post such notice as hereinbefore provided; and the board shall likewise cause notice to be given of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and notices of withdrawal of election, and of the time of the filing of the same, shall conclusively be imputed to all employes.

Sec. 5. If the employer, or the insurance company carrying such risk, or commissioner of insurance, as the case may be, and the injured employe reach an agreement in regard to compensation under this act, a memorandum of such agreement shall be filed with the industrial accident board, and, if approved by it, shall be deemed final and binding upon the parties thereto. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

Sec. 6. If the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, and the employe fail to reach an agreement in regard to compensation under this act, either party may notify the industrial accident board, who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member of the industrial accident board, and shall act as chairman. The other two members shall be named respectively by the two parties.

Sec. 7. It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The board shall designate one of its members to act as chairman, and, if either party does not appoint its member on this committee within seven days after notification as above provided, the board or

any member thereof shall fill the vacancy and notify the parties to that effect.

Sec. 8. The committee of arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings of the committee shall be held at the locality where the injury occurred, and the decision of the committee shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within seven days, the decision shall stand as the decision of the industrial accident board: Provided, That said industrial accident board may, for sufficient cause shown, grant further time in which to claim such review.

Sec. 9. The industrial accident board or any member thereof may appoint a duly qualified impartial physician to examine the injured employé and to report. The fee for this service shall be five dollars and traveling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

Sec. 10. The arbitrators named by or for the parties to the dispute shall each receive five dollars a day for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees of such arbitrators and other costs of such arbitration, not exceeding, however, the taxable costs allowed in suits at law in the circuit courts of this state, shall be fixed by the board and paid by the state as the other expenses of the board are paid. The fees and the payment thereof of all attorneys and physicians for services under this act shall be subject to the approval of the industrial accident board.

Sec. 11. If a claim for review is filed, as provided in part three, section eight, the industrial accident board shall promptly review the decision of the committee of arbitration and such records as may have been kept of its hearings, and shall also if desired hear

the parties, together with such additional evidence as they may wish to submit, and file its decision therein with the records of such proceedings. Such review and hearing may be held in its office at Lansing or elsewhere as the board shall deem advisable.

Sec. 12. The findings of fact made by said industrial accident board acting within its powers, shall, in the absence of fraud, be conclusive, but the Supreme Court shall have power to review questions of law involved in any final decision or determination of said industrial accident board: Provided, That application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or by any other method permissible under the rules and practice of said court or the laws of this state, and to make such further orders in respect thereto as justice may require.

Sec. 13. Either party may present a certified copy of the decision of such industrial accident board approving agreements of settlement as provided in part three, section five hereof, or of the decision of such committee of arbitration when no claim for review is made as provided in part three, section eight, or of the decision of such industrial accident board when a claim for review is filed as provided in part three, section eleven, providing for payment of compensation under this act, to the circuit court for the county in which such accident occurred, whereupon said court shall, without notice, render a judgment in accordance therewith against said employer and also against any insurance company carrying such risk under the provisions of this act; which judgment, until and unless set aside shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

Sec. 14. Any weekly payment under this act may be reviewed by the industrial accident board at the request of the employer or the insurance company carry-

ing such risks, or the commissioner of insurance as the case may be, or the employé; and on such review it may be ended, diminished or increased, subject to the maximum and minimum amounts above provided, if the board finds that the facts warrant such action.

Sec. 15. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the employé may, at his option, proceed either at law against that person to recover damages, or against the employer for compensation under this act, but not against both, and if compensation be paid under this act the employer may enforce for his benefit or for that of the insurance company carrying such risk, or the commissioner of insurance, as the case may be, the liability of such other person.

Sec. 16. All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board.

Sec. 17. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employés in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for that purpose. The said reports shall contain the name and nature of the business of the employer, the location of his establishment or place of work, the name, age, sex and occupation of the injured employé, and shall state the time, the nature and cause of the injury, and such other information as may be required by the board. Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offense.

## PART IV—METHOD OF PAYMENT.

Sec. 1. Every employer filing his election to become subject to the provisions of this act, as hereinbefore set forth, shall have the right to specify at the time of doing so, subject to the approval of said industrial accident board, which of the following methods for the payment of such compensation he desires to adopt, to-wit:

First. Upon furnishing satisfactory proof to said board of his solvency and financial ability to pay the compensation and benefits hereinbefore provided for, to make such payments directly to his employés, as they may become entitled to receive the same under the terms and conditions of this act; or

Second. To insure against such liability in any employers' liability company authorized to take such risks in the state of Michigan; or

Third. To insure against such liability in any employers' insurance association organized under the laws of the state of Michigan; or

Fourth. To request the commissioner of insurance of the state of Michigan to assume the administration of the disbursement of such compensation exclusive of that provided for in part two, section four herein, and the collection of the premiums and assessments necessary to pay the same, as provided in part five hereof. Said board, however, shall have the right, from time to time to review and alter its decision in approving the election of such employer to adopt any one of the foregoing methods of payment, if in its judgment such action is necessary or desirable to secure and safeguard such payments to employés.

Sec. 2. Nothing herein shall affect any existing contract for employers' liability insurance or affect the organization of any mutual or other insurance company, or any arrangement now existing between employers and employés, providing for the payment to such em-

ployés, their families, dependents or representatives, sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer; and in addition thereto, the right to enforce in his own name in the manner provided in this act the liability of any insurance company or of any employers' association organized under the laws of the state of Michigan, or the commissioner of insurance, who may, in whole or in part, have insured the liability for such compensation: Provided, however, That payment in whole or in part of such compensation by either the employer or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, shall, to the extent thereof be a bar to recovery against the other, of the amount so paid.

Sec. 3. Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract for insurance, unless such company shall have been approved by the commissioner of insurance as provided by law.

Sec. 4. Any employer against whom liability may exist for compensation under this act may, with the approval of the industrial accident board, be relieved therefrom by:

1. Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at three per centum per annum, with such trust company of this state as shall be designated by the em-

ployé, or by his dependents, in case of his death, and such liability exists in their favor, or in default of such designation by him, or them, after ten days' notice in writing from the employer, with such trust company of this state as shall be designated by the industrial accident board; or

2. By the purchase of an annuity, within the limitation provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employé, or his dependents, or the industrial accident board, as provided in subsection one of this section.

**PART V—ADMINISTRATION BY COMMISSIONER OF INSURANCE.**

Sec. 1. Whenever five or more employers, who have become subject to the provisions of this act, and who have on their pay rolls an aggregate number of not less than three thousand employés, shall in writing request the commissioner of insurance so to do, he shall assume charge of levying and collecting from them such premium and dividends as may from time to time be necessary to pay the sums which shall become due their employés, or dependents of their employés, as compensation under the provisions of this act, and also the expense of conducting the administration of such funds; and shall disburse the same to the persons entitled to receive such compensation under the provisions of this act: Provided, however, That neither the commissioner of insurance nor the state of Michigan shall become or be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the funds so collected and received by him as hereinafter provided.

Sec. 2. The commissioner of insurance shall immediately upon assuming the administration of the collection and disbursement of the moneys referred to in the preceding section, cause to be created in the state



treasury a fund to be known as "accident fund." Each such employer shall contribute to this fund to the extent of such premiums or assessments as the commissioner shall deem necessary to pay the compensation accruing under this act to employés of such employers or to their dependents, which premiums and assessments shall be levied in the manner and proportion hereinafter set forth. The commissioner of insurance shall give a good and sufficient bond in the sum of twenty-five thousand dollars, executed by some surety company authorized to do business in the state of Michigan, covering the collection and disbursement of all moneys that may come into his hands under the provisions of this act. The premium on said bond shall be paid out of the general funds of the state on an order of the auditor general. Said bond must be approved by the board of state auditors.

Sec. 3. It is the intention that the amounts raised for such fund shall ultimately become neither more nor less than self-supporting, and the premiums or assessments levied for such purpose shall be subject to readjustment from time to time by the commissioner of insurance as may become necessary.

Sec. 4. The commissioner of insurance may classify the establishments or works of such employers in groups in accordance with the nature of the business in which they are engaged and the probable risk or injury to their employés under existing conditions. He shall determine the amount of the premiums or assessments which such employers shall pay to said accident fund, and may prescribe when and in what manner such premiums and assessments shall be paid, and may change the amount thereof both in respect to any or all of such employers from time to time, as circumstances may require, and the condition of their respective plants, establishments or places of work in respect to the safety of their employés may justify, but all such premiums

or assessments shall be levied on a basis that shall be fair, equitable and just as among such employers. At the beginning of each fiscal year it shall be the duty of the commissioner of insurance to call for the required payment of premiums in such amounts as shall, together with any balance in the accident fund, in his judgment, and subject to the approval of said industrial accident board, be sufficient to enable him to pay all sums which may become due and payable to the employés of any such employer who has become subject to the provisions of part five of this act, and also the expenses of administering such funds during the following year.

Sec. 5. If any employer shall make default in the payment of any contribution, premium or assessment required as aforesaid by the commissioner of insurance, the sum due shall be collected by an action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In case any injury happens to any of the workmen of such employer during the period of any default in the payment of any such premium, assessment or contribution, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman, or by his dependents in case death results from such accident, as if he had not elected to become subject to this act. In case, however, the amount actually collected in by such injured workman or his dependents shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of said accident fund. If the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section shall have the choice, to be exercised before suit, of proceeding by suit or taking under this act. If

such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund.

Sec. 6. 'Any employer subject to the provisions of part five of this act, who has complied with all the rules, regulations and demands of the industrial accident board and the commissioner of insurance, may withdraw therefrom at the expiration of the period of one year for which he has elected to become subject to the provisions of this act: Provided, however, That he shall give written notice of such withdrawal to said commissioner of insurance at least thirty days before the expiration of such period: And Provided further, That if at the time of such withdrawal liability may exist against employer for compensation to employes who have been theretofore killed or injured, as hereinbefore provided, such employer shall either relieve himself and the commissioner of insurance from such liability in the manner provided in part four, section four of this act, or shall otherwise protect and indemnify said commissioner of insurance against such liability in such reasonable manner as he may require.

Sec. 7. In case any controversy shall arise between the commissioner of insurance and any employer subject to the provisions of part five of this act, relative to any rule or regulation adopted by said commissioner of insurance, or any decision made by him in respect to the collection, administration and disbursement of such funds, or in case any controversy shall arise between any employe claiming compensation under the provisions of this act and said commissioner of insurance, all such controversies of every kind and nature shall be subject to review in like manner and with the same force and effect in all respects as is heretofore provided in respect to differences arising through the administration of such funds by the employer, or by a liability in-

insurance company or by an employers' mutual insurance association.

Sec. 8. The books, records and pay rolls of each employer subject to the provisions of part five of this act shall always be open to inspection by the commissioner of insurance, or his duly authorized agent or representative, for the purpose of ascertaining the correctness of the amount of the pay roll reported, the number of men employed, and such other information as said commissioner may require in the administration of said funds. Refusal on the part of any such employer to submit said books, records and pay rolls for such inspection, shall subject the offending employer to a penalty of fifty dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

Sec. 9. The commissioner of insurance shall issue proper receipts for all moneys so collected and received from employers, as aforesaid, shall take receipts for all sums paid to employes for compensation under the provisions of this act, and shall keep full and complete records of all business transacted by him in the administration of such funds. He may employ such deputies and assistants and clerical help as may be necessary, and as the board of state auditors may authorize, for the proper administration of said funds and the performance of the duties imposed upon him by the provisions of this act, at such compensation as may be fixed by said board of state auditors, and may also remove them. The commissioner of insurance and such deputies and assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but all such salaries and expenses so authorized by the provisions of this act shall be charged to and paid out of said accident fund. He shall include in his annual report a full and correct

statement of the administration of such fund, showing its financial status and outstanding obligations, the claims and the amount paid on each claim, claims not paid, claims contested and why, and general statistics in respect to all business transacted by him under the provisions of this act.

Sec. 10. Disbursements from said accident fund shall be made only upon warrants approved by the board of state auditors upon vouchers therefor transmitted to it by the commissioner of insurance. If at any time there shall not be sufficient money in said fund wherewith to pay the same, the employer on account of whose workmen it was that such warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid, with interest thereon at the legal rate, from the date of such payment to the date such next following contribution becomes payable, and if the amount of the credit shall exceed the amount of the contribution, he shall be repaid such excess.

Sec. 11. If this act shall be thereafter repealed, all moneys which are in the accident fund at the time of such repeal shall be subject to disposition under the direction of the circuit court for the county of Ingham, with due regard, however, to the obligation incurred and existing to pay compensation under the provisions of this act.

#### PART VI—MISCELLANEOUS PROVISIONS.

Sec. 1. If the employé, or his dependents, in case of his death, of any employer subject to the provisions of this act files any claim with, or accepts any payment from such employer, or any insurance company carrying such risks, or from the commissioner of insurance on account of personal injury, or makes any agreement, or submits any question to arbitration under this act, such action shall constitute a release to such

employer of all claims or demands at law, if any, arising from such injury.

Sec. 2. If the provisions of this act relating to compensation for injuries to or death of workmen shall be repealed or adjudged invalid or unconstitutional, the period intervening between the occurrence of an injury or death and such repeal, or the final adjudication of invalidity, shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death, but the amount of any compensation which may have been paid for any such injury shall be deducted from any judgment for damages recovered on account of such injury.

Sec. 3. This act shall not affect any cause of action existing or pending before it went into effect.

Sec. 4. The provisions of this act shall apply to employers and workmen engaged in intrastate commerce, and also to those engaged in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this state, may, subject to the approval of the industrial accident board, and so far as not forbidden by any act of congress, voluntarily accept and become bound by the provisions of this act in like manner and with the same force and effect in all respects as is hereinbefore provided for other employers and their workmen.

Sec. 5. All acts or parts of acts inconsistent with this act are to be deemed replaced by this act, and to that end are hereby repealed.

Sec. 6. The legislature intends that part five of this act shall be deemed separate from the other parts thereof, so that if said part five should fail or be ad-

judged invalid or unconstitutional it shall in no way affect any other part of this act.

Sec. 7. To carry out the provisions of this act there is hereby appropriated for the expenses of the industrial accident board for the fiscal year ending June thirtieth, nineteen hundred thirteen, and annually thereafter, the sum of twenty-five thousand dollars. The auditor general shall add to and incorporate into the state tax the sum of twenty-five thousand dollars annually, which said sum shall be included in the state taxes apportioned by the auditor general on all taxable property of the state, to be levied, assessed and collected as other state taxes, and when so assessed and collected to be paid into the general fund to reimburse said fund for the appropriation made by this act.

**§ 356. Letter of instructions to employers.**—The Michigan Industrial Accident Board, pursuant to the duties imposed upon it by the Michigan statute, has formulated a letter of instructions, and sends them to all employers of labor covered by the statute, regarding reports which they are required to make regarding injuries fatal or otherwise which have been received by their employés in the course of their employment. This letter is as follows:

“To Employers of Labor:

“The law requires that every employer shall keep a record of all injuries fatal and otherwise, received by his employés in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury, a report thereof shall be made in writing to the Industrial Accident Board at Lansing.

“Your attention is called to the fact that the law provides a fine when such reports are not made in the manner specified.

“For such purpose these blanks are furnished, a copy of which may be sent to the board and one re-

tained by employers. Use a blank for each injury and when more are needed notify the board.

"This blank is to be filled out in accordance to the facts at the time of reporting. In case the accident results subsequently in death, the fact should be immediately reported on your supplemental blank.

"The board desires to receive suggestions calculated to guard against a repetition of accidents under your observation, especially improvements in the guarding of machinery, etc., and it will at all times be ready to co-operate in everything that tends toward a lessening of accidents in the industrial field of Michigan.

"Industrial Accident Board."

### § 357. Form of employers' notice to employés that he accepts provisions of act.

#### NOTICE TO EMPLOYEES.

All workmen or operatives employed in or about this establishment are hereby notified that the employer or employers owning or operating the same have filed with the Industrial Accident Board, at Lansing, notice of election to become subject to the provisions of Act No. 10 of Public Acts, Extra Sessions of 1912.

(This act is commonly known as the Workmen's Compensation Law.)

You are further notified that unless you serve written notice on your employer of your election not to come under the law, the act will immediately apply to you.

If you do notify your employer that you elect not to come under said act, you may afterwards waive such claim by a notice in writing, which shall take effect five days after it is delivered to the employer, at the expiration of which period the law will apply to you.

#### INJURY NOT RESULTING IN DEATH—NOTICE OF.

An employe who has been injured in the course of his employment and whose incapacity extends over a period of two weeks (Sec. 3, part 2) shall serve written notice of such injury on his employer (from whom blank forms may be obtained), which notice shall be signed by the person injured and shall state in ordinary language the time, place and cause of the injury (Sec. 16, part 2).

#### INJURY RESULTING IN DEATH—NOTICE OF.

When death results from an injury received by an employe in



the course of his employment, notice shall be served by his dependents, or by a person in their behalf (Sec. 16, part 2).

#### LIMIT OF PERIOD OF NOTIFICATION.

Notice of the injury shall be given to the employer within three months after the happening thereof, and claim for compensation shall be made within six months, or in case of death or in the event of physical or mental incapacity, notice shall be given within six months after the death or removal of such mental or physical incapacity. No proceeding for compensation under this act shall be maintained unless these rules are observed. (Sec. 15, part 2).

Date.....

.....Employer

**§ 358. Formal procedure—List of forms.**—The Industrial Accident Board, in complying with the duties imposed upon it by the Michigan Act, has, as a part of the scheme of administration devised by it, prescribed seven forms which are required to be used by the employers, employes and injured workmen covered by the act, together with certain instructions which are designated:

(a) Employer's written acceptance of provisions of act filed with Industrial Accident Board (filed by employer);

(b) Employer's notice of withdrawal from operation of act (filed by employer with Industrial Accident Board);

(c) Notice of employé upon entering employment that he will not be subject to act (by employé);

(d) Notice by employé that he elects to be subject to provisions of act (by employé);

(e) Notice to employer of claim for injury (by employé);

(f) Form of first report of accident (by employer);

(g) Form of supplemental report of accident (by employer).

**§ 359. Form of employer's written acceptance. (a)<sup>1</sup>**

Industrial Accident Board,

Lansing, Mich.

Take notice that the undersigned employer of labor in Michigan accepts the provisions of Act No. 10 of Public Acts, Extra Session, 1912.

Number of employes.....

Location of place of employment.....

Nature of employment.....

Method of providing for compensation adopted by the undersigned .....

(State whether Mutual Insurance, Insurance Company,

.....

[give name], State Insurance Commissioner or carry own risk.)

Dated at....., this.....day of.....19..

.....

.....

By .....

.....

(P. O. Address.)

**§ 360. Form of employers' notice of withdrawal from operation of act. (b)**

Industrial Accident Board,

Lansing, Mich.

Take notice that the undersigned employer of labor in Michigan hereby withdraws his (her) (its) election to become subject to the provisions of the Workmen's Compensation Law.<sup>2</sup>

Dated at....., this.....day of.....19..

By .....

.....

(P. O. Address.)

**§ 361. Form of notice of employé upon entering employment that he elects not to be subject to act. (c)**

To.....

(Write name of employer plainly on above line.)

.....

(Write address of employer plainly on above line.)

You will take notice that being about to enter your employ, I

---

<sup>1</sup> If employer wishes to accept the provisions of the above law, this notice must be signed by the employer and filed with the Industrial Accident Board. When so filed it becomes immediately binding on the employer. If employer is a corporation, the notice should have the corporate name and seal affixed and be signed by an officer having authority to do so.

<sup>2</sup> This notice to be effective, must be filed in the office of the

elect not to be subject to the provisions of Act No. 10 of Public Acts, Extra Session 1912.<sup>3</sup>

(Employee) .....

(Address) .....

Dated at....., this.....day of.....19..

### § 362. Form of notice by employé that he elects to be subject to provisions of act. (d)

To.....

(Write name of employer plainly on above line.)

.....  
(Write address of employer plainly on above line.)

Take notice that as your employé, I hereby elect to become subject to the provisions of Act No. 10 of Public Acts Extra Sessions 1912.<sup>4</sup>

Dated at....., this.....day of.....19..

(Employee) .....

(Address) .....

### § 363. Form of notice to employer of claim for injury. (e)

To.....

(Write name of employer plainly on above line.)

.....  
(Write address of employer plainly on above line.)

You will take notice that according to the provisions of Act No. 10 of Public Acts, Extra Sessions 1912.....  
.....hereby makes claim for compensation for injury received by .....  
while in your employ.<sup>5</sup>

Board at least thirty days prior to the expiration of any succeeding year.

<sup>3</sup> If employer has elected to become subject to provisions of the act, then upon entering the service the employé comes under the act likewise, unless he gives the employer the above notice at the time he enters such service.

<sup>4</sup> Unless the employé gives notice to the contrary, and without giving above notice, he will become subject to the law by remaining in such employ after the filing of such acceptance by employer.

<sup>5</sup> This notice should be filled out by injured employé or some one in his behalf. In case of death of employé notice is to be filled out by dependent. Notice should be served within thirty days of accident on employer by delivering a copy of the above notice to employer personally or by registered mail.

Fill out in duplicate, hand or mail one copy to employer, mail the other copy to the industrial accident board, Lansing, Michigan.

Name of employé.....  
Postoffice address .....

The accident occurred.....day of.....191..  
at ....., Michigan.

The nature of the injury is as follows:

.....  
.....

Signature .....

Address .....

Dated at....., this.....day of.....19..

### § 364. Form of first report of accident by employer. (f)

.....  
(Name of firm.)

.....  
(Business.)

.....  
(P. O. Address.)

Reports that the person named opposite was injured on the premises No. ....Street,

.....  
(City or Village.)

on the.....day of.....19..

Nature and extent of injury.....

.....  
.....

Cause and manner of the accident: State fully how the accident occurred (indefinite or incomplete reports will be returned for correction).  
.....  
.....

Has any other accident ever occurred to any of the employés under similar circumstances at the same place or with the same apparatus? .....

Was part of machine causing the injury properly guarded at time of accident? .....

If so, how .....

Was the person injured regularly employed on such machine or on the particular work at which injured.....

If so, how long .....

How long had injured person been working on day of accident?...

.....

Can you suggest a practical method against a repetition of this accident? .....

Date of reporting .....

(Name of person injured.)

(Street residence.)

(City or Village.)

(Occupation.)

Sex..... Age..... Married.....

No. of children..... No. of dependents.....

Nationality .....

Did injured person understand English.....

Did injured elect not to come under law.....

Was amputation necessary, if so state.....

Was incapacity permanent and total (as per Sec. 9, Part 2).....

Did the injury result in death.....

Did the injury require medical aid.....

Did you supply all the medical aid required.....

State the cost of medical aid rendered by you.....

How much time did the employé lose due to the injury.....

State the amount of weekly wages.....

Has or will this employé, or dependents, receive compensation weekly .....

If so, how much per week.....

In case of death, with no dependents, state cost of last sickness and burial .....

Name and address of physician attending injured.....

Name of hospital .....

If no compensation was or is to be paid to the injured, state ground for not so doing.....

If case is not yet closed, make a report giving the final figures, at termination of disability, or if death results later.

(Signature of firm reporting.)

Name of person making out report.....

Position .....

In case injury caused death, give name, address, age and relationship of each person dependent on injured person's earnings.

(Name)	(Age)	(Relationship)	(Address)
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

§ 365. Form of supplementary report of accident by employer. (g)

Date ..... 19..

Name of employer.....

Name of injured person.....

Did injury result in death.....

Give's physician's statement of cause of death.....

.....

Has it caused any permanent physical injury.....

If so, state its nature exactly (see instructions below).....

.....

Has injured person returned to work.....

If so, on what date.....

At what occupation.....

At what wages per day.....

If injured has not yet returned to work, state probable length of disability on account of accident.....

Did you supply all medical aid required during first three weeks..

.....

State total medical and hospital cost of the accident.....

State amount of compensation paid to date.....

How many weeks .....

From..... To.....

File with the Board copies of all agreements with employés.

State method of providing for compensation for injured.....

.....

Information furnished by.....

Position .....

If injury resulted in permanent total disability or death, give number of dependents. What dependents will receive compensation? (Sec. 7, part 2.)

(Name)	(Age)	(Relationship)	(Address)
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

INSTRUCTIONS.

By permanent injury is meant any of the following: (a) loss of any member or any part of a member; (b) the crippling or maiming of a member, other than by loss of a part, such as permanent

stiffening of cords, joints or muscles; (c) any permanent internal injury or weakness, such, for example, as rupture, loss of hearing, etc.

In case of any permanent injury to arms or hands, indicate whether right or left arm or hand.

In case of loss of any part, state exact extent; as, for example, tip of index finger on right hand, two fingers to second joint on left hand, right arm to elbow, loss of sight in one eye, etc.

Mail to the commission on this form, properly filled out, a report at the end of each fourth week during disability.

Mail to the commission a final report when disability ceases.





## CHAPTER XXI.

### THE RHODE ISLAND WORKMEN'S COMPENSATION ACT.

Sec.	Sec.
366. Nature and scope of act.	372. Form of notice by parent or guardian of employé of claim at common law. (c)
367. Text of the Rhode Island Compensation Act.	373. Procedure in the superior court under act.
368. Administration and procedure.	374. Form of agreement of final adjustment. (d)
369. Formal procedure under act.	374a. Form of agreement where payments continue. (e)
370. Form of notice by employer of acceptance of provisions of act. (a)	374b. Form of petition by any person entitled to file under act. (f)
371. Form of notice by employé of claim of right of action at common law. (b)	

§ 366. Nature and scope of act.—The three so-called common-law defenses are abolished in all cases where the employer does not accept the provisions of the act, except in the case of employés engaging in domestic service or agriculture and in employments where five or less workmen or operatives are regularly employed. Employers of five or less workmen may accept the provisions of the law.

The act makes the employer directly liable to pay the compensations provided. All injuries growing out of the employments covered by the law are compensated, unless they are self-inflicted or are due to intoxication. All employés who are engaged in employments covered by the act are entitled to the compensations provided in the law, except those who are engaged in casual employments, and employés whose remuneration exceeds \$1,800.00 per annum.

In the event of death of employé with surviving de-

pendents the compensation is 50 per cent. of the weekly wages for 300 weeks, with \$4 minimum and \$10 maximum weekly payments. If there be no dependents then there is an allowance of the reasonable expenses of last sickness and burial not to exceed \$200. In case of disability compensation begins after two weeks. Where the disability is total 50 per cent. of weekly wage loss, not more than \$10 for not more than 500 weeks is paid. In case of partial disability, 50 per cent. of wage loss, with a minimum of \$4 and a maximum of \$10 per week for not more than 300 weeks is paid. In both cases specified injuries are paid fixed rates.

An employé may elect not to be bound by the act by serving on his employer a written notice of renunciation.

**§ 367. Text of the Rhode Island Workmen's Compensation Act.**—The Rhode Island act is entitled an act relative to payments to employés for personal injuries received in the course of their employment, and to the prevention of such injuries. It became operative October 1, 1912, and reads as follows:

**ARTICLE I—ABROGATION OF REMEDIES AND DEFENSES.**

Sec. 1. In an action to recover damages for personal injury sustained by accident by an employé arising out of and in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense: (a) That the employé was negligent; (b) That the injury was caused by the negligence of a fellow employé; (c) That the employé has assumed the risk of the injury.

Sec. 2. The provisions of this act shall not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by employés engaged in domestic service or agriculture.

Sec. 3. The provisions of this act shall not apply to employers who employ five or less workmen or op-

eratives regularly in the same business, but such employers may by complying with the provisions of Section 5 of this article become subject to the provisions of this act.

Sec. 4. The provisions of Section 1 of this article shall not apply to actions to recover damages for personal injuries, or for death resulting from personal injuries, sustained by employes of an employer who has elected to become subject to the provisions of this act, as provided in Section 5 of this article.

Sec. 5. Such election on the part of the employer shall be made by filing with the commissioner of industrial statistics a written statement to the effect that he accepts the provisions of this act, and by giving reasonable notice of such election to his workmen, by posting and keeping continuously posted copies of such statement in conspicuous places about the place where his workmen are employed, the filing of which statement and the giving of which notice shall operate to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year, each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file with said commissioner a notice in writing to the effect that he desires to withdraw his election to be subject to the provisions of this act and shall give reasonable notice to his workmen as above provided. Blank forms of election and withdrawal as herein provided, shall be furnished by said commissioner.

Sec. 6. An employé of an employer who shall have elected to become subject to the provisions of this act as provided in Section 5 of this article shall be held to have waived his right of action at common law to recover damages for personal injuries, if he shall not have given his employer at the time of his contract of hire

notice in writing that he claimed such right, and within ten days thereafter have filed a copy thereof with the commissioner of industrial statistics, or, if the contract of hire was made before the employer so elected, if the employé shall not have given the said notice and filed the same with said commissioner within ten days after notice by the employer, as above provided, of such election, and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employé shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commissioner a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age legally permitted under the laws of this state shall be deemed *sui juris* for the purpose of this act and no other person shall have any cause of action or right to compensation for an injury to such minor employé except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employés are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law to recover damages for personal injuries. Any employé, or the parent or guardian of any minor employé who has given notice to the employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

Sec. 7. The right to compensation for an injury, and the remedy therefor granted by this act, shall be in lieu of all rights and remedies as to such injury now

existing, either at common law or otherwise; and such rights and remedies shall not accrue to employes entitled to compensation under this act while it is in effect.

#### ARTICLE II—PAYMENTS.

Sec. 1. If an employé who has not given notice of his claim of common-law rights of action or who has given such notice and has waived the same, as provided in Section 6 of Article I, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation, as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.

Sec. 2. No compensation shall be allowed for the injury or death of an employé where it is proved that his injury or death was occasioned by his wilful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty.

Sec. 3. Contingent fees of attorneys for services under this act shall be subject to the approval of the superior court.

Sec. 4. No compensation except as provided by Section 12 of this Article shall be paid under this act for any injury which does not incapacitate the employé for a period of at least two weeks from earning full wages, but, if such incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

Sec. 5. During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services, and medicines when they are needed, the amount of the charge for such services to be fixed, in case of the failure of the employer and employé to agree, by the superior court.

Sec. 6. If death results from the injury, the employer shall pay the dependents of the employé wholly

dependent upon his earnings for support at the time of his injury a weekly payment equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury; Provided, however, that, if the dependent of the employé to whom the compensation shall be payable upon his death is the widow of such employé, upon her death the compensation thereafter payable under this act shall be paid to the child or children of the deceased employé, including adopted and step-children, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, dependent upon the widow at the time of her death. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employé leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employé to such partial dependents bears to the annual earnings of the deceased at the time of injury. When weekly payments have been made to an injured employé before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury: Provided, however, that, if the deceased leaves no dependents at the time of the injury, the employer shall not be liable to pay compensation under this act except as specifically provided in Section 9 of this article.

Sec. 7. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employé:

(a) A wife upon a husband with whom she lives or upon whom she is dependent at the time of his death.

(b) A husband upon a wife with whom he lives or upon whom he is dependent at the time of her death.

(c) A child or children, including adopted and step-children, under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living or upon whom he or they are dependent at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation hereunder shall be divided equally among them.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact as the fact may have been at the time of the injury. In such other cases, if there is more than one person wholly dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency.

Sec. 8. No person shall be considered a dependent unless he is a member of the employé's family or next of kin, wholly or partly dependent upon the wages, earnings or salary of the employé for support at the time of the injury.

Sec. 9. If the employé dies as a result of the injury leaving no dependents at the time of the injury, the employer shall pay, in addition to any compensation provided for in this act, the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

Sec. 10. While the incapacity for work resulting

from the injury is total, the employer shall pay the injured employé a weekly compensation equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury. In the following cases it shall, for the purpose of this section, be conclusively presumed that the injury resulted in permanent total disability, to-wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine, resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull, resulting in incurable imbecility or insanity.

Sec. 11. While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employé a weekly compensation equal to one-half the difference between his average weekly wages, earnings, or salary, before the injury and the average weekly wages, earnings or salary which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

Sec. 12. In case of the following specified injuries the amounts named in this section shall be paid in addition to all other compensation provided for in this act:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the entire and irrecoverable loss of the sight of both eyes, one-half of the average weekly wages, earnings, or salary, of the injured person, but not more than ten dollars nor less than four dollars a week, for a perior of one hundred weeks.



(b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or the entire and irrecoverable loss of the sight of either eye, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, one-half the average weekly wages, earnings, or salary of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

Sec. 13. The "average weekly wages, earnings, or salary" of an injured employé shall be computed as follows:

(a) If the injured employé has worked in the same employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his "average weekly wages" shall be three hundred times the average daily wages, earnings, or salary, which he has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two. But where the employé is employed concurrently by two or more employers, for one of whom he works at one time and for another of whom he works at another time, his "average weekly wages" shall be computed as if the wages, earnings, or salary received by him from all such employers were wages, earnings, or salary earned in the employment

of the employer for whom he was working at the time of the accident.

(b) If the injured employé has not so worked in such employment during substantially the whole of such immediately preceding year, his "average weekly wages" shall be three hundred times the average daily wages, earnings, or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or a similar employment, in the same or a neighboring place, has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment divided by fifty-two.

(c) In cases where the foregoing methods of arriving at the "average weekly wages, earnings or salary" of the injured employé cannot reasonably and fairly be applied, such "average weekly wages, earnings, or salary" shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employé, and of other employés of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employé at the time of the accident in the employment in which he was working at such time.

(d) Where the employer has been accustomed to pay to the employé a sum to cover any special expense incurred by said employé by the nature of his employment, the sum so paid shall not be reckoned as part of the employé's wages, earnings or salary.

(e) The fact that an employé has suffered a previous injury, or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of the later injury, in the employ-

ment in which he was working at such time, and shall be arrived at according to, and subject to the limitations of, the previous provisions of this section.

Sec. 14. No savings or insurance of the injured employé, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the employed be considered in fixing the compensation under this act.

Sec. 15. The compensation payable under this act in case of the death of the injured employé shall be paid to his legal representatives; or, if he has no legal representative, to his dependents entitled thereto, or, if he leaves no such dependents, to the person to whom the expenses for the burial and last sickness are due. If the payment is made to the legal representative of the deceased employé, it shall be paid by him to the dependents or other persons entitled thereto under this act. All payments of compensation under this act shall cease upon the death of the employé from a cause other than or not induced by the injury for which he is receiving compensation.

Sec. 16. In case an injured employé is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any right, privilege or election accrues to him or them under this act, his conservator, guardian, or next friend may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time in this act provided shall run so long as such incompetent or minor has no conservator or guardian.

Sec. 17. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such in-

jury shall have been made within one year after the occurrence of the same, or, in case of the death of the employé, or in the event of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

Sec. 18. Such notice shall be in writing and shall state in ordinary language the nature, time, place and cause of the injury, and the name and address of the person injured and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative, or by a dependent, or by a person in behalf of either.

Sec. 19. Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, or if the employer is a corporation, upon any officer or agent upon whom process may be served, by delivering the same to the person on whom it is to be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or, in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice shall constitute completed service.

Sec. 20. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place or cause of the injury, or the name and address of the person injured; unless it is shown that it was the intention to mislead and the employer was in fact misled thereby. Want of notice shall not be a bar to the proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury, or that failure to give such notice was due to accident, mistake or unforeseen cause.

Sec. 21. The employé shall, after an injury, at reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an

examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer. The employé shall have the right to have a physician, provided and paid for by himself, present at such examination.

Any justice of the superior court may, at any time after an injury, on the petition of the employer or employé, appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner as fixed by the justice appointing him shall be paid by the party moving for such appointment.

Such medical examiner being first duly sworn to the faithful performance of his duties before the justice appointing him or clerk of the court shall thereupon, and as often as necessary, examine such injured employé in order to determine the nature, extent, and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employé in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of Article III of this act, and such report shall be produced in evidence in any hearing or proceeding to determine the amount of compensation due such employé under the provisions of this act. If such employé refuses to submit himself for any examination provided for in this act, or in any way obstructs any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.

Sec. 22. No agreement by an employé, except as provided in Article IV, to waive his rights to compensation under this act shall be valid.

Sec. 23. No claims for compensation under this act, or under any alternative scheme permitted by Article IV of this act, shall be assignable, or subject to attachment, or liable in any way for any debts.

Sec. 24. The claim for compensation under this act, or under any alternative scheme permitted by Article IV of this act and any decree on any such claim shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the wages of labor are now preferred by the laws of this state; but nothing herein shall be construed as impairing any lien which the employé may have acquired.

Sec. 25. In case payments have continued for not less than six months either party may, upon due notice to the other party, petition the superior court for an order commuting the future payments to a lump sum. Such petition shall be considered by the superior court and may be summarily granted where it is shown to the satisfaction of the court that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump-sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered the superior court shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five per centum per annum with annual rests. Upon paying such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record.

#### ARTICLE III.—PROCEDURE.

Sec. 1. If the employer and the employé reach an agreement in regard to compensation under this act,

a memorandum of such agreement signed by the parties shall be filed in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of this article. The clerk shall forthwith docket the same in a book kept for that purpose, and shall thereupon present said agreement to a justice of the superior court, and when approved by the justice the agreement shall be enforceable by said superior court by any suitable process, including executions against goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the provisions of said agreement. No appeal shall lie from the agreement thus approved unless upon allegation that such agreement had been procured by fraud or coercion. Such agreement shall be approved by the justice only when its terms conform to the provisions of this act.

When death has resulted from the injury and the dependents of the deceased employé entitled to compensation are, or the apportionment thereof among them is, in dispute, such agreement may relate only to the amount of compensation.

Sec. 2. If the employer and employé fail to reach an agreement in regard to compensation under this act, either employer or employé, and when death has resulted from the injury and the dependents of the deceased employé entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest may file in the office of the clerk of the superior court having jurisdiction of the matter as provided in Section 16 of this article, a petition in the nature of a petition in equity setting forth the names and residences of the parties, the facts relating to employment at the time of the injury, the cause, extent and character of the injury, the amount of wages, earnings, or salary received at the time of the injury, and the

knowledge of the employer or notice of the occurrence of the injury, and such other facts as may be necessary and proper for the information of the court, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

Sec. 3. Within four days after the filing of the petition, a copy thereof, attested by the petitioner or his attorney, shall be served upon the respondent in the same manner as a writ of summons in a civil action.

Sec. 4. Within ten days after the filing of the petition, the respondent shall file an answer to said petition, together with a copy thereof for the use of the petitioner, which shall state the claims of the respondent with reference to the matter in dispute as disclosed by the petition. No pleadings other than petition and answer shall be required to bring the cause to a hearing for final determination. The superior court may grant further time for filing the answer and allow amendments of said petition and answer at any stage of the proceedings. If the respondent does not file an answer, the cause shall proceed without formal default or decree pro confesso. If the respondent be an infant or person under disability, the superior court shall appoint a guardian ad litem for such infant or person under disability. Such guardian ad litem may be appointed on any court day after service of the copy referred to in Section 3 of this article, upon motion of any party after notice given as required for motions made in the superior court, and opportunity to said infant or person under disability to be heard in regard to the choice of such guardian ad litem. The guardian ad litem so appointed shall file the answer required by this section.

Sec. 5. The petition shall be in order for assignment for hearing on the motion day which occurs next after fifteen days from the filing of the petition. Upon the days upon which said petition shall be in order for hearing it shall take precedence of other cases upon the



calendar, except cases for tenements let or held at will or by sufferance.

Sec. 6. The justice to whom said petition shall be referred by the court shall hear such witnesses as may be presented by each party, and in a summary manner decide the merits of the controversy. His decisions shall be filed in writing with the clerk, and a decree shall be entered thereon. Such decree shall be enforceable by said superior court by any suitable process including executions against goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the provisions of said decree. Such decree shall contain findings of fact, which, in the absence of fraud, shall be conclusive. The superior court may award as costs the actual expenditures, or such part thereof as to the court shall seem meet, but not including counsel fees, and shall include such costs in its decree. The superior court may refuse to award costs, and no costs shall be awarded against an infant or person under disability or against a guardian ad litem.

Sec. 7. Any person aggrieved by the final decree of the superior court under this act may appeal to the Supreme Court upon any question of law or equity decided adversely to the appellant by said final decree or by any proceeding or ruling prior thereto appearing of record, the appellant having first had his objections noted to any adverse rulings made during the progress of the trial at the time such rulings were made, if made in open court and not otherwise of record.

The appellant shall take the following steps:

(a) Within ten days after entry of said final decree he shall file a claim of appeal and, if a transcript of the testimony and rulings or any part thereof be desired, a written request therefor.

(b) Within such time as the justice of the superior court who heard the petition, or, in case of his inability to act from any cause within such time as any other

justice thereof shall fix, whether by original fixing of the time, or by extension thereof, or by a new fixing after any expiration thereof, the appellant shall file reasons of appeal stating specifically all the questions of law or equity decided adversely to him which he desires to include in his reasons of appeal, together with a transcript of as much of the testimony and rulings as may be required. The Supreme Court may allow amendments of said reasons of appeal. Upon the filing of said reasons of appeal and transcript, the clerk of the superior court shall present the transcript to the justice who heard the cause for allowance. The justice after hearing and examination, shall restore the transcript to the files of the clerk with a certificate of his action thereon made within twenty days after filing the transcript, unless the twentieth day shall fall in vacation, in which event the certificate may be filed at any time before the first Monday in the following month of October.

If the transcript be not allowed by the justice who heard the cause within the time prescribed, or objection to his allowance be made by any party, the correctness of the transcript may be determined by the Supreme Court by petition filed within thirty days after filing the transcript, unless the thirtieth day shall fall in vacation, in which event the correctness of the transcript may be determined by petition, filed on or before the tenth day after the first Monday in the following month of October. In all other respects than in time of filing the same course shall be followed as provided in Section 21 of Chapter 298 of the General Laws for establishing the truth of exceptions.

Sec. 8. Upon the restoration of the transcript to the files, or, if there be no transcript, then upon the filing of the reasons of appeal, the clerk of the superior court shall certify the cause and all papers to the Supreme Court.

Sec. 9. The claim of an appeal shall suspend the operation of the decree appealed from, but, in case of default in taking the procedure required, such suspension shall cease, and the superior court upon motion of any party shall proceed as if no claim of appeal had been made, unless it be made to appear to the superior court that the default no longer exists.

Sec. 10. Any court day in the Supreme Court shall be a motion day for the purpose of hearing a motion to assign the appeal for hearing.

Sec. 11. The Supreme Court after hearing any appeal shall determine the same, and affirm, reverse or modify the decree appealed from, and may itself take or cause to be taken by the superior court, such further proceedings as shall seem just. If a new decree shall be necessary, it shall be framed by the Supreme Court for entry by the superior court. Thereupon the cause shall be remanded to the superior court for such further proceedings as shall be required.

Sec. 12. No process for the execution of a final decree of the superior court from which an appeal may be taken shall issue until the expiration of ten days after the entry thereof, unless all parties against whom such decree is made waive an appeal by a writing filed with the clerk or by causing an entry thereof to be made on the docket.

Sec. 13. If, in the course of the proceedings in any cause, any question of law shall arise which in the opinion of the superior court is of such doubt and importance, and so affects the merits of the controversy, that it ought to be determined by the Supreme Court before further proceedings, the superior court may certify such question to the Supreme Court for that purpose, and stay all further proceedings except such as are necessary to preserve the rights of the parties.

Sec. 14. At any time before the expiration of two years from the date of the approval of an agreement,

or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings or decree may be from time to time reviewed by the superior court upon the application of either party, after due notice to the other party, upon the ground that the incapacity of the injured employé has subsequently ended, increased, or diminished. Upon such review the court may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the court upon such review shall be served on the parties and filed with the clerk of the court having jurisdiction, in like time and manner and subject to like disposition as in the case of original decrees: Provided, that an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the superior court in the same manner as original agreements in regard to compensation are required to be approved by the provisions of Section 1 of Article III of this act.

Sec. 15. The superior court shall prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings under this act; and in making such orders said court shall not be bound by the provisions of the General Laws relating to practice. In the absence of such orders, special orders shall be made in each case.

Sec. 16. Proceedings shall be brought either in the county where the accident occurred or in the county where the employer or employé lives or has a usual

place of business. The court where any proceeding is brought shall have power to grant a change of venue.

Sec. 17. No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act.

Sec. 18. An employé's claim for compensation under this act shall be barred unless an agreement or a petition, as provided in this article, shall be filed within two years after the occurrence of the injury, or, in case of the death of the employé, or, in the event of his physical or mental incapacity, within two years after the death of the employé or the removal of such physical or mental incapacity.

Sec. 19. If an employé receiving a weekly payment under this act shall cease to reside in the state, or, if his residence at the time of the accident is in an adjoining state, the superior court, upon the application of either party, may, in its discretion, having regard to the welfare of the employé and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.

Sec. 20. All questions arising under this act, if not settled by agreement of the parties interested therein, shall, except as otherwise herein provided, be determined by the superior court.

Sec. 21. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the employé may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to receive both damages and compensation; and if the employé has been paid compensation under this act, the person by whom the com-

pensation was paid shall be entitled to indemnity from the person so liable to pay damages as aforesaid, and, to the extent of such indemnity, shall be subrogated to the rights of the employé to recover damages therefor.

#### ARTICLE IV—ALTERNATIVE SCHEMES PERMITTED.

Sec. 1. Any employer may enter into an agreement with his employés in any employment to which this act applies to provide a scheme of compensation, benefit, or insurance, in lieu of the compensation provided for in this act, subject to the approval of the superior court. Such approval shall be granted only on condition that the scheme proposed provides as great benefits as those provided by this act; and, if the scheme provides for contributions by employés, it shall confer additional benefits at least equivalent to these contributions. If such a scheme meets with the approval of said court, the clerk shall issue a certificate enabling the employer to contract with any or all of his employés in employments to which this act applies to substitute such scheme for the provisions of this act for a period of not more than five years.

Sec. 2. No scheme which provides for contributing by employés shall be so certified which does not contain suitable provisions for the equitable distribution of any money or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already incurred, if and when such certificate is revoked or the scheme otherwise terminated.

Sec. 3. If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or any other valid and substantial reason therefor exists, the superior court, on reasonable notice to the interested parties, shall revoke the certificate and the scheme shall thereby be terminated.

## ARTICLE V—MISCELLANEOUS PROVISIONS.

Sec. 1. In this act, unless the context otherwise requires:

(a) "Employer" includes any person, copartnership, corporation or voluntary association, and the legal representative of a deceased employer.

(b) "Employé" means any person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer, and whose remuneration does not exceed eighteen hundred dollars a year. It does not include a person whose employment is of a casual nature, and who is employed otherwise than for the purpose of the employer's trade or business. Any reference to an employé who has been injured shall, where the employé is dead, include a reference to his dependents as hereinbefore defined, or to his legal representative, or, where he is a minor, or incompetent, to his conservator or guardian.

Sec. 2. Nothing in this act shall affect the liability of the employer to a fine or penalty under any other statute.

Sec. 3. The provisions of this act shall not apply to injuries sustained, or accidents which occur, prior to the taking effect hereof.

Sec. 4. If any section of this act shall be declared unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the validity of any other portion thereof which can be given reasonable effect without the part so declared unconstitutional or invalid.

Sec. 5. In all cases where an employer and employé shall have elected to become subject to the provisions of this act, the provisions of Section 14 of Chapter 283 of the General Laws, shall not apply while this act is in effect.

Sec. 6. All acts and parts of acts inconsistent herewith are hereby repealed.

Sec. 7. This act may be cited as "Workmen's Compensation Act."

**§ 368. Administration and procedure.**—All claims for injuries arising under this act may be adjusted by the employer and the employé in a written agreement which must be approved by a justice of the superior court. In the absence of any such agreement all such claims are determined and the procedure therefor prescribed by the justices of said court. The determination of the superior court on questions of fact is final but an appeal is allowed to the Supreme Court on questions of law.

**§ 369. Formal procedure under act.**—Employers and their employés and parents and guardians of infant employés who are covered by the act, are required to file with the State Commissioner of Industrial Statistics certain notices. These notices are designated and entitled as follows: (a) Notice by the employer of acceptance of the provisions of the act (by the employer); (b) Notice by employé of claim of right of action at common law, in accordance with section 6, Article I of act (by employé); (c) Notice, by parent or guardian of employé, of claim of right of action at common law in accordance with section 6, Article I of act.

**§ 370. Form of notice by employer of acceptance of provision of act.(a)**

.....191

To the Commissioner of Industrial Statistics,  
State House, Providence, Rhode Island.

Notice is hereby given that I, we.....  
accept the provisions of Chapter 831 of the Public Laws of the State of Rhode Island, entitled "An Act Relative to Payments to Employés for Personal Injuries Received in the Course of their Employment and to the Prevention of such Injuries."

Witness: Name<sup>1</sup>.....  
P. O. Address.....

---

<sup>1</sup>If employer is a firm or corporation, give name of firm or corporation and add name of duly authorized member of firm or officer or corporation.



§ 371. Form of notice by employé of claim of right of action at common law, in accordance with section 6, article I of act. (b)<sup>2</sup>

.....191

To -----  
(Name of Employer)

.....  
(Postoffice Address)

I,....., an employé of..... hereby give notice in writing that I claim my right of action at Common Law to recover damages for personal injuries sustained while in the employment of said.....

Witness: Name.....  
P. O. Address.....

§ 372. Form of notice, by parent or guardian of employé, of claim of right of action at common law in accordance with section 6, article I of act. (c)<sup>3</sup>

.....191

To .....  
(Name of Employer)

.....  
(Postoffice Address)

I, .....parent, guardian of.....an employé of ..... hereby give notice in writing of claim of right of action at common law to recover damages for personal injuries sustained by said.....while in the employment of said.....

Witness: Name.....  
P. O. Address.....

§ 373. Procedure in the superior court under act.—

At this time the procedure provided by the Rhode Island Act, Article III under the direction of the superior court, consists of two forms of settlement-agreements and of form of petition for settlement of claim together with certain foot notes on interpretation of the act which are designated and entitled as follows:

<sup>2</sup>This form should be executed in duplicate and one copy given to the Employer, the other sent to the Commissioner of Industrial Statistics, State House, Providence.

<sup>3</sup>This form should be executed in duplicate and one copy given to the Employer, the other sent to the Commissioner of Industrial Statistics, State House, Providence.

(d) form of agreement where settlement is final; (e) form of agreement where payments are to continue; (f) form of petition by any person entitled to file petition under Workmen's Compensation Act. These forms are given in the order named above in the following sections:

**§ 374. Form of agreement where adjustment is final. (d)**

(If payments are to continue use longer form of agreement.)

It is hereby Mutually Agreed as follows, namely:

That \_\_\_\_\_

(Name and residence of employer.)

\_\_\_\_\_ has paid to \_\_\_\_\_

(Name and residence, street and number, of employé.)

\_\_\_\_\_ the sum of \_\_\_\_\_

dollars and \_\_\_\_\_ cents

as follows: \_\_\_\_\_

(Specify amount for medical and hospital services and

\_\_\_\_\_ medicines and amount for weekly payments stating number of such

\_\_\_\_\_ weekly payments.)

\_\_\_\_\_ in full settlement and discharge of all compensation due said \_\_\_\_\_

(Name of Employé.)

under the Workmen's Compensation Act and all acts in amendment thereof and in addition thereto for all injuries received by said \_\_\_\_\_

(Name of Employé.)

on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_, while in the employ of said \_\_\_\_\_

at \_\_\_\_\_

(Place of injury, city, street and number.)

as \_\_\_\_\_

(Nature of employment.)

That said injury was received as follows: \_\_\_\_\_

(Describe accident

\_\_\_\_\_ briefly.)

That the nature and extent of said injury were:-----  
 (Describe injury  
 -----  
 briefly.)

That the amount of the average weekly wages, earnings or salary of  
 the said-----

(Name of employé.)

was ----- dollars

and ----- cents

That receipt of said first mentioned sum is hereby acknowledged by  
 said -----

(Name of employé.)

and said -----

(Name of employer.)

is hereby released and discharged from all liability for said injury  
 whether arising under said Workmen's Compensation Act or other-  
 wise.

Witness our hands at-----  
 in the County of-----in said State of  
 Rhode Island on this-----day of-----  
 A. D. 19--.

Witness -----

(Signature of employer.)

Witness -----

(Signature of employé.)

Approved-----A. D. 19--.

-----  
 Justice of Superior Court.

Note. This agreement is subject to approval and review by the  
 superior court and must be filed in the office of the clerk of said  
 court as provided by Section 1 of Article III of the Workmen's Com-  
 pensation Act.

### § 374a. Form of agreement where payments con- tinue. (e)

(If adjustment is final use shorter form of settlement agreement.)

(See foot notes.)

State of Rhode Island and Providence Plantations.

-----ss.

This Memorandum of Agreement entered into on this-----  
 day of-----A. D. 19--, at-----,  
 in-----County of-----, in said State, by  
 and between -----  
 of -----

as employer\_\_\_\_\_, and\_\_\_\_\_  
of\_\_\_\_\_, in\_\_\_\_\_County of\_\_\_\_\_,  
in\_\_\_\_\_State\_\_\_\_\_, as\_\_\_\_\_  
(State whether

employé, representative or dependent of deceased employé, etc.)  
in accordance with the provisions of Chapter 831 of the Public Laws  
passed by the General Assembly of said State of Rhode Island at the  
January Session, A. D. 1912, entitled "An Act Relative to Payments  
to Employés for Personal Injuries received in the course of their  
employment, and to the Prevention of such Injuries," otherwise  
known as the "Workmen's Compensation Act," and of all acts in  
amendment thereof and in addition thereto:

WITNESSETH, that,

Whereas, \_\_\_\_\_

(Name of injured employé.)

\_\_\_\_\_did, on the\_\_\_\_\_day of\_\_\_\_\_, A. D. 19\_\_\_\_, at\_\_\_\_\_  
\_\_\_\_\_, in\_\_\_\_\_County of\_\_\_\_\_,  
in\_\_\_\_\_State of\_\_\_\_\_, while in the employ  
of said employer as\_\_\_\_\_

(Insert nature of occupation.)

receive a personal injury by accident arising out of and in the course  
of h\_\_\_\_\_said employment as follows:\_\_\_\_\_

(Describe accident briefly.)

It is hereby mutually agreed as follows, namely:

1. That the character and extent of the injury received by the  
said \_\_\_\_\_ as aforesaid  
were as follows:\_\_\_\_\_

a. resulting in the death of said\_\_\_\_\_

on the\_\_\_\_\_day of\_\_\_\_\_, A. D. 19\_\_\_\_.

(1) said deceased leaving the following wholly dependent upon  
h\_\_\_\_\_earnings for support at the time of said injury, namely:\_\_\_\_\_

(Insert names in full and addresses.)

(2) said deceased leaving the following partly dependent upon  
h\_\_\_\_\_earnings for support at the time of said injury, namely:\_\_\_\_\_

(Insert names in full and addresses.)

(a) the amount contributed annually by said deceased employé  
to those partially dependent upon h\_\_\_\_\_earnings at the time of said  
injury as aforesaid being\_\_\_\_\_dollars, and the amount of the  
annual earnings of said deceased employé at the time of said in-  
jury being \_\_\_\_\_dollars.

(b) resulting in the permanent total incapacity of the said-----.

(c) resulting in the total incapacity of the said----- as follows: ----- (State duration of total incapacity so far as possible.)

(d) resulting in the partial incapacity of the said----- as follows: ----- (State duration of partial incapacity so far as possible.)

2. That the amount of the average weekly wages, earnings or salary of the said-----at the time of receiving said injury as aforesaid was-----dollars and-----cents.

3. That one-half the difference between the average weekly wages, earnings or salary of the said-----before the said injury and the average weekly wages, earnings or salary which he has been able to earn since said injury is the sum of-----dollars and-----cents.

4. That the amount of charge for reasonable medical and hospital services and medicines required by the said-----and by h----- furnished during the first two weeks after the injury to h----- received as aforesaid is hereby fixed at-----dollars and-----cents.

5. That the said-----employer as aforesaid shall make the following payments subject to the terms of said act as compensation under said act for said injury received by said-----as aforesaid-----.

6. That upon compliance with the terms of the above agreement or of any modification thereof duly approved by the superior court, said employer shall be fully discharged from all liability for said injury whether arising under said act or otherwise, and shall be entitled to a duly executed release.

In witness whereof we hereunto set our hands at said----- in said county of-----, on said-----day of----- A. D. 19-----.

Witness:

----- (Signature of Employer.)-----

Witness:

----- (Signature of Employé)-----

Approved----- A. D. 19-----.

-----  
Justice of Superior Court.

Note—The above form is designed to fit any case arising under the Workmen's Compensation Act. Only such portions as are applicable to the case in hand should be used; all others should be stricken out. For example: Subdivision (a) of paragraph 1 is applicable only in case of death of injured employé, and paragraph 3 is applicable only in case of partial incapacity.

Note—This agreement is subject to approval and review by the superior court, and must be filed in the office of the clerk of said court as provided by Section 1 of Article III of the Workmen's Compensation Act.

§ 374b. Form of petition by any person entitled to file under act. (f)

State of Rhode Island and Providence Plantations. \_\_\_\_\_ss.  
 \_\_\_\_\_ vs. \_\_\_\_\_. Superior Court. Petition No.  
 \_\_\_\_\_. Filed under Workmen's Compensation Act. Petition.  
 Respectfully represent\_\_ your petitioner\_\_\_\_\_of\_\_\_\_\_  
 in\_\_\_\_\_County of\_\_\_\_\_, in \_\_\_\_\_ State of  
 \_\_\_\_\_, who is\_\_\_\_(State whether employer, employé, repre-  
 sentative, dependent, etc.)\_\_\_\_\_file\_\_ this petition for relief against  
 \_\_\_\_\_of\_\_\_\_\_in\_\_\_\_\_county of  
 \_\_\_\_\_in\_\_\_\_\_State of\_\_\_\_\_, as  
 \_\_\_\_\_(State whether employer, employé, etc.)\_\_\_\_\_in accordance  
 with the provisions of Chapter 831 of the Public Laws passed by  
 the General Assembly of said State of Rhode Island at the January  
 Session A. D. 1912, entitled "An Act Relative to Payments to Em-  
 ployés for Personal Injuries Received in the Course of their Em-  
 ployment, and to the Prevention of such Injuries," otherwise known  
 as the "Workmen's Compensation Act," and of all acts in amend-  
 ment thereof and in addition thereto:

1. That on the\_\_\_\_\_day of\_\_\_\_\_A. D. 19\_\_\_\_, \_\_\_\_\_  
 was engaged in the employ of said\_\_\_\_\_at\_\_\_\_\_in  
 \_\_\_\_\_county of\_\_\_\_\_in\_\_\_\_\_State of\_\_\_\_\_,  
 and has been engaged in such employment for the space of\_\_\_\_\_.

2. That said\_\_\_\_\_employé as aforesaid, was not at  
 said time engaged in domestic service or agriculture.

3. That the facts relating to said employment at the time afore-  
 said were as follows:\_\_\_\_\_

4. That on said \_\_\_\_\_ day of \_\_\_\_\_ A. D. 19\_\_\_\_, said  
 \_\_\_\_\_while in the employ of said\_\_\_\_\_  
 as aforesaid, received personal injury by accident arising out of and  
 in the course of said employment.

5. That at said time said\_\_\_\_\_employer as aforesaid,  
 had elected to become subject to the provisions of said act and had  
 not withdrawn such election as provided by the terms thereof.

6. That said\_\_\_\_\_at said time had waived h\_\_\_\_ right  
 of action at common law to recover damages for personal injuries  
 received as aforesaid.

7. That said injury was\_\_\_\_\_occasioned by the wilful intention  
 of said\_\_\_\_\_to bring about the injury to h\_\_\_\_self or  
 another and did\_\_\_\_result from h\_\_\_\_intoxication while on duty.

8. That the cause of said injury was\_\_\_\_\_.

9. That the character and extent of said injury were as follows,  
 viz: \_\_\_\_\_

a. resulting in the death of said\_\_\_\_\_on the\_\_\_\_\_  
 day of\_\_\_\_\_A. D. 19\_\_\_\_.

(1) the said deceased leaving the following wholly dependent

upon h\_\_\_\_\_ earnings for support at the time of said injury, namely:

(2) the said deceased leaving the following partly dependent upon h\_\_\_\_\_ earnings for support at the time of said injury, namely:

(a) the amount contributed annually by said deceased employé to those partially dependent upon h\_\_\_\_\_ earnings at the time of said injury as aforesaid being\_\_\_\_\_and the amount of the annual earnings of said deceased employé at the time of said injury being\_\_\_\_\_.

(3) the reasonable expense of the last sickness and burial of said deceased employé incurred by\_\_\_\_\_amounting to the sum of\_\_\_\_\_.

b. resulting in the permanent total incapacity of the said\_\_\_\_\_

c. resulting in the total incapacity of the said\_\_\_\_\_as follows:\_\_\_\_\_(State duration of total incapacity so far as possible.)

d. resulting in the partial incapacity of the said\_\_\_\_\_as follows: \_\_\_\_\_.(State duration of partial incapacity so far as possible.)

10. That at the time of said injury as aforesaid said \_\_\_\_\_ was receiving wages, earnings or salary as follows:\_\_\_\_\_.

11. That the amount of the average weekly wages, earnings or salary of the said\_\_\_\_\_at the time of receiving said injury as aforesaid was \_\_\_\_\_dollars and \_\_\_\_\_cents.

That one-half the difference between the average weekly wages, earnings or salary of the said\_\_\_\_\_before the injury aforesaid and the average weekly wages, earnings or salary which\_\_\_\_he has been able to earn since said injury is the sum of \_\_\_\_\_dollars and \_\_\_\_\_cents.

12. That the amount of the charge for reasonable medical and hospital services and medicines required by the said\_\_\_\_\_and by h\_\_\_\_\_ furnished during the first two weeks after said injury is \_\_\_\_\_dollars and \_\_\_\_\_cents.

13. That notice of said injury was\_\_\_\_\_ given to said employer and claim for compensation with respect to said injury was\_\_\_\_\_ made in accordance with the provisions of said act.

That failure to give such notice was due to accident, mistake or unforeseen cause\_\_\_\_\_.

That\_\_\_\_\_said\_\_\_\_\_(Name of employer)\_\_\_\_\_employer as aforesaid\_\_\_\_\_agent,\_\_\_\_\_, had\_\_\_\_\_ knowledge of said injury.

14. That the parties hereto have failed to reach an agreement in regard to compensation for said injury under said act.

15. That the matter in dispute between the said parties is as follows: \_\_\_\_\_.

16. That your petitioner\_\_\_\_\_claim\_\_\_\_\_with reference thereto as follows: \_\_\_\_\_.

17. That your petitioner----ha----in all respects complied with the terms of said act and-----entitled to relief thereunder.

Wherefore, your petitioner----pray----this Honorable Court to hear the parties aforesaid and to decide the merits of the said controversy and to make such order and decree therein as shall do justice in the premises between the said parties.

And your petitioner----will ever pray.<sup>4</sup>

-----  
-----  
Attorney----for petitioner.

<sup>4</sup>This form is designed to fit any case arising under the Workmen's Compensation Act. Only such portions as are applicable to the case in hand should be used; all others should be stricken out. For example: Subdivision (a) of paragraph 9 is applicable only in case of death of injured employé, and the latter half of paragraph 11 is applicable only in case of partial incapacity.



## CHAPTER XXII.

### THE ARIZONA COMPENSATION ACT.

Sec.

375. The nature and scope of act.

Sec.

375a. Text of act.

§ 375. **The nature and scope of act.**—The Arizona act puts into effect a constitutional mandate and is a direct compensation law. It covers certain enumerated hazardous employments. The common-law doctrine of no liability without fault is abrogated. A waiting period of two weeks is prescribed. The maximum payment is four thousand dollars. Compensation ceases when the employé is capable of earning in the same or other gainful employments, or otherwise, wages equal to the amount earned at the time of the accident. A medical examination is required and a refusal to submit to the examination results in a suspension of the right to compensation. Questions between the parties are determined by agreement between them, by arbitration or by submission to the attorney general of the state. Compensation is made a preferential claim. The right of election or non-election is preserved to the parties.

§ 375a. **Text of the act.**—The Arizona act was approved June 6, 1912, and became operative the first of September following. It provides:

Sec. 1. That this act is a workman's compulsory compensation law as provided in Sec. 8 of article XVIII of the State Constitution.

Sec. 2. Compulsory compensation shall be paid by his employer to any workman engaged in any employment declared and determined as in Sec. 3 of this act (as provided in Sec. 8 of article XVIII of the State

Constitution) to be especially dangerous, whether said employer be a person, firm, association, company or corporation, if in the course of the employment of said employé personal injury thereto from any accident arising out of and in the course of, such employment is caused in whole, or in part, or is contributed to, by a necessary risk or danger of such employment, or of necessary risk or danger inherent in the nature thereof, or by failure of such employer, or any of his or its officers, agents, or employé or employés, to exercise due care, or to comply with any law affecting such employment.

Sec. 3. The employments hereby declared and determined to be especially dangerous (as provided in Sec. 8 of article XVIII of the State Constitution) within the meaning of this act are as follows:

1. The operation of steam railroads, electrical railroads, street railroads, by locomotives, engines, trains, motors, or cars of any kind propelled by a steam, electricity, cable or other mechanical power, including the construction, use or repair of machinery, plants, tracks, switches, bridges, roadbeds, upon, over, and by which such railway business is operated.

2. All work when making, using or necessitating dangerous proximity to gunpowder, blasting powder, dynamite, compressed air, or any other explosive.

3. The erection or demolition of any bridge, building or structure in which there is or in which the plans and specifications require iron or steel frame work.

4. The operation of all elevators, elevating machinery or derricks or hoisting apparatus used within or on the outside of any bridge, building or other structure for conveying materials in connection with the erection or demolition of such bridge, building or structure.

5. All work on ladders or scaffolds of any kind elevated twenty (20) feet or more above the ground or floor beneath in the erection, construction, repair, paint-

ing or alteration of any building, bridge, structure or other work in which the same are used.

6. All work of construction, operation, alteration or repair, where wires, cables, switchboards, or other apparatus or machinery are in use charged with electrical current.

7. All work in the construction, alteration, or repair of pole lines for telegraph, telephone or other purposes.

8. All work in mines; and all work in quarries.

9. All work in the construction and repair of tunnels, subways and viaducts.

10. All work in mills, shops, works, yards, plants and factories where steam, electricity, or any other mechanical power, is used to operate machinery and appliances in and about such premises.

Sec. 4. In case such employé or his personal representative shall refuse to settle for such compensation (as provided in Sec. 8 of article XVIII of the State Constitution), and chooses to retain the right to sue said employer (as provided in any law provided for in Sec. 7, article XVIII of the State Constitution) he may so refuse to settle and may retain said right.

Sec. 5. It is hereby declared and determined to be contrary to public policy that any employer conducting any especially dangerous industry, through any of his or its officers, agents or employé or employés, shall fail to exercise due care, or fail to comply with any law affecting such employment, in such manner as to endanger the lives and safety of the employés thereof, without assuming the burden of the financial loss through disability entailed upon such employés, or their dependents, through such failure; and it is further declared and determined to be contrary to public policy that the burden of the financial loss to employés in such dangerous employments, or to their dependents, due to injuries to such employés received through such acci-

dents as are hereinbefore mentioned shall be borne by such employés without due compensation paid to said employés, or their dependents, by the employer conducting such employment, owing to the inability of said employés to secure employment in said employments under a free contract as to the conditions under which they will work.

Sec. 6. The common-law doctrine of no liability without fault is hereby declared and determined to be abrogated in Arizona as far as it shall be sought to be applied to the accidents hereinbefore mentioned.

Sec. 7. When, in the course of work in any of the employments described in section 3 above, personal injury by accident arising out of and in the course of such labor, service, or employment, is caused to or suffered by any workman engaged therein, by any risk or failure as specified in Sec. 2 hereof, then such employer shall be liable to and must make and pay compensation to the workman injured, and his personal representative, when death ensues, for the benefit of the estate of the deceased, for such injury at the rates and in the manner hereinafter set out in this act;

Provided, That the employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks after the date of the accident from earning full wages at the work at which he was employed at the time of the injury, and

Provided further, That the employer shall not be liable under this act in case the employé refuses to settle for such compensation and retains his right to sue as provided in Sec. 4 of this act.

Sec. 8. When an injury is received by a workman engaged in any labor or service specified in Sec. 3 and for which the employer is made liable as specified in section 7, then the measure and amount of compensation to be made by the employer to such a workman or

his personal representative for such injuries, shall be as follows:

1. If the injury by accident does not result in death within six months from the date of the accident, but does produce or result in total incapacity of the workman for work at any gainful employment for more than two (2) weeks after the accident then the compensation to be made to such a workman by his employer shall be semi-monthly payment commencing from the date of the accident and continuing during such total incapacity of a sum equal to fifty (50) per centum of the workman's average semi-monthly earnings when at work on full time during the preceding year, if he shall have been in the employment of such employer for such length of time; but if not for a full year, then fifty (50) per centum of the average wages, whether semi-monthly, weekly, or daily, being earned by such workman during the time he was at work for his employer before and at the time of the accident.

2. In case (1) the accident does not wholly incapacitate the workman from the same or other gainful employment; or (2) in case the workman, being at first wholly incapacitated, thereafter recovers so as to be able to engage at labor in the same or other gainful employment, thereby earning wages, then in each case the amount of the semi-monthly payment shall be one-half of the difference between the average earnings of the workman at the time of the accident determined as above provided, and the average amount he is earning, or is capable of earning, thereafter, semi-monthly in the same or other employment—it being the intent and purpose of this act, that the semi-monthly payments shall not exceed, but equal, from time to time one-half the difference between the amount of average earnings ascertained as aforesaid at the time of the accident and the average amount which the workman is earning, or is capable of earning, in the same or other employment

or otherwise, after the accident, and at the time of such semi-monthly payment. Such payments shall cease upon the workman recovering and earning, or being capable of earning, in the same or other gainful employment or otherwise, wages equal to the amount being earned at the time of the accident.

Provided, however, that the payments shall continue to be made as herein determined to the workman so long as incapacity to earn wages in the same or other employment continues, but in no case shall the total amount of such payments as provided in subsections 1 and 2 of this section exceed four thousand (\$4,000.00) dollars.

3. When the death of the workman results from the accident within six months thereafter, and the workman, at the time of his death leaves a widow, and a minor child, or children dependent on such workman's earnings for support and education, then the employer shall pay to the personal representative of the deceased workman for the exclusive benefit of such widow and child, or children, a sum equal to twenty-four hundred times one-half the daily wages or earnings of the decedent, determined as aforesaid, but in no event more than the sum of four thousand dollars (\$4,000.00). Such sum shall be paid in lump and held in trust by such representative for such widow and children and applied by him to the support of the widow while she remains unmarried, and to the support and education of the children so long as necessary, and until eighteen (18) years of age, in such way and manner as to him shall seem best and just, under and in accordance with the directions of the court having jurisdiction of the estate of the decedent; any balance remaining unapplied at the closing of the estate of the decedent shall be distributed to the decedent's widow (if still his widow), and the children or next of kin, as provided by the law of descents. The personal representative may pay out of

said fund the reasonable and necessary expenses of medical attendance and burial of the decedent. If the workman leaves no widow or child, or children, but a father or mother or sister dependent on him for support, then said sum shall be for their benefit to be applied as above provided. If the deceased workman leaves no widow, children, or other dependents, then the employer shall pay the reasonable expenses of medical attendance upon the decedent and also provide and secure his burial in a proper cemetery, which may be chosen by the friends of the decedent.

Sec. 9. Any workman claiming compensation under the provisions of this act shall, if requested by the employer, or upon written notice by him given to the employer, submit himself for bodily examination by some competent licensed medical practitioner or surgeon of the county in which the workman then resides, to ascertain and determine the nature, character, extent, and effect of the injury to such workman at the time of such examination for the purpose of ascertaining the semi-monthly compensation then and thereafter to be made. The employer or the workman not having requested the examination may have present at the examination a medical representative by him chosen. Each party shall pay his chosen representative the expenses of such examination. The said notice shall be given at least ten (10) days before the date fixed for the examination, and the place shall be convenient for the workman to be examined. In case the employer is a corporation the notice may be served on any officer or agent thereof in the said county, and if none there, then elsewhere in the State. The examiner shall make a verified report in writing in duplicate within ten (10) days after the examination and furnish one copy to the employer and one to the workman. If any workman neglects or refuses to submit to an examination, his right to compensation, if any, shall be suspended until he notifies the employer in

writing of his readiness to submit thereto. No persons other than the physicians and surgeons aforesaid shall attend any examination except by agreement of the parties. If the employer and the workman each have an examiner and they shall agree upon and join in a report, the same shall be conclusive so long as it remains in force. If either the employer or employé, having opportunity, fails to provide an examiner, then the report of the examiner making such examination shall likewise be conclusive so long as the same remains in force. If the workman and employer each have an examiner present, and they disagree as to the nature, character, extent, or effect of the injury, and the degree of incapacity, if any, for labor on the part of the workman at the time of such examination, then they shall join in a written report stating the matters in which they agree, and in which they disagree, and mutually select some disinterested medical practitioner or surgeon of the county to whom the same shall be referred, and who shall proceed promptly to make an examination of the workman as to the matters in disagreement, and the same shall be conclusive so long as such report remains in force, which report shall be made by such disinterested examiner and verified, and a copy thereof furnished to the employer and to the workman. For making such examination, such examiner shall be entitled to a fee of ten dollars (\$10.00), to be paid one-half by the employer and one-half by the workman at the time of such examination. Such examination may be required by the workman or the employer at periods not shorter than three months from the date of the last examination. The report of any examination shall supersede all previous reports. When there is disagreement between the examiners aforesaid, and they cannot agree upon a third person as above provided, then it shall be the duty of the chairman of the board of supervisors of the county, on written notice of either the



workman or employer, to appoint some licensed medical practitioner or surgeon, who shall be a resident of the county, to make such examination, and said appointee shall be entitled to the same compensation.

Sec. 10. Every workman seeking compensation under the provisions of this act, where the same is not fatal or does not render him incompetent to give the notice, shall, within two weeks after the day of the accident, give notice in writing to the employer, or his representative employing such workman, or to the foreman or other employé of the employer under whom he was working at the time of the accident, and before the workman has voluntarily left the service of the employer and during his disability. The notice shall state (1) the name and address of such workman, (2) the date and place of the accident; (3) and state in simple words the cause thereof, (4) the nature and degree of the injury sustained, (5) and that compensation is claimed under this act. The notice may be written and served personally by the workman or by any one in his behalf on any person named above in this section or by mail, post-paid, to such person, addressed to the office, place of business or residence of the person notified. No want or defect or inaccuracy of the notice shall be a bar to the right of the workman to claim and receive compensation under this act, or to maintain any proceeding to secure the same, unless the employer proves that he has been seriously prejudiced by such lack of notice. No compensation shall be claimed or allowed so long as such notice is not given. If the workman is killed, or otherwise rendered incompetent to give the notice, the same is not hereby required, nor is any notice required to be given by the personal representative of such deceased person. It shall be the duty of any one giving the notice as in this section provided, to mail a duplicate copy to the attorney general of this state.

Sec. 11. Any question which may arise between the

employer and the workman or his personal representative, under this act, shall be determined either (1) by written agreement between the parties, or (2) by arbitration, or (3) by reference and submission to the attorney general of this State; and in case of a refusal or failure of the employer and workman, or such personal representative, to agree upon a settlement by either of the modes above provided, then by a civil action at law, showing such refusal or failure as a reason for suit. If any employer fails to make and pay compensation as in this act provided, for a period of three months after the date of the accident, or for any two months or more after payment of the last monthly compensation, then the injured workman, if surviving, or the personal representative, in case of death, may bring an action in any court of competent jurisdiction, to recover and enforce the compensation herein provided. Such action shall be conducted as near as may be in the same manner as other civil action at law. The action shall be brought within one year after the happening of the accident, or after the non-payment of any semi-monthly installment theretofore fixed by agreement or otherwise; or within one year after the appointment of a personal representative of the decedent. The judgment in such action, when in favor of the plaintiff, shall be for a sum equal to the amount of payments then due and prospectively due under the provisions of this act. The judgment shall be for the total amount thereof and collectible without relief from valuation or appraisal laws. And the court awarding the judgment shall, by proper order, direct that the same shall be paid ratably to the workman, if living, in semi-monthly installments until the determination of the periods provided in this act the same as if such payments were being made voluntarily or without suit in conformity with this act. The judgment by agreement, if it appears to the court to be for the best interest of the workman, may be paid in lump

and not otherwise. The court rendering the judgment is hereby given power, from time to time, to make such orders touching the matter of payments as may appear best to provide for the maintenance and support of the workman and his family during his infirmity, and for his and their benefit and security. The employer shall have the right to stay the judgment in whole, whether the same is to be paid in lump sum or monthly installment, upon securing the same by one or more freehold sureties or a surety company, to be approved by the court rendering the judgment, who shall enter into a recognizance acknowledging themselves bound for the defendant for the payment of the judgment in lump or in partial payments, as the same is, or shall be made, payable, together with interest and costs. On failure of any one or more of such payments by the employer, execution may issue out of said court and cause, against such defendant, and his bail from time to time leviable and collectible without relief from valuation or appraisal or stay laws. The recognizance shall be written upon the order book of the court and immediately following the entry of the judgment and signed by such bail and docketed in the judgment docket of the court against such defendant and bailors, which shall bind the property of the same in the same manner as the judgment binds the property of the employer. In an action by a personal representative of a deceased workman, the court shall determine the proportions of the judgment, whether in lump or in installments, to be distributed between the widow and the child, or children, with the power to alter and amend the proportionment from time to time on petition of any party interested as the court may deem best for the support, maintenance, and education of such widow and children.

In any action under this act the court shall fix and allow, at the time of entering the judgment against the employer, a reasonable fee to the workman's attorney,

to be taxed against the employer as costs, and collectible in the same manner. From such allowance there shall be no right of appeal. Such attorney shall have no claim for compensation upon the judgment or its proceeds, other than as herein provided. But no allowance, or any fee payable by the workman to an attorney for services, or any fee payable by the workman to an attorney for services in securing a recovery or disbursement, shall ever exceed twenty-five (25) per centum of the principal of the sum recovered; and the same shall not be made a lien on the recovery of its proceeds, except as may be determined and allowed and fixed by the court.

Sec. 12. Any workman entitled to monthly or other payments from or to any judgment against any employer as above provided, as compensation shall have the same preferential claim therefor against the property and assets of the employer and any bailor, as now is allowed by law for unpaid wages or personal services. No judgment or any part thereof, nor monthly payments due, or coming due, under this act shall be assignable by the workman or subject to mortgage, levy, execution, or attachment. But the same shall stand as a continuing provision for the maintenance and support of such injured workman during his incapacity for the periods provided in this act.

Sec. 13. In case an injured workman, having a right of action under the provisions of this act, shall be mentally incompetent at the time when any right or privilege accrues thereunder to him, a guardian may be appointed by any court having jurisdiction, to secure and protect the rights of such workman; and the guardian may claim and exercise any and all such rights or privileges with the same force and effect as if the workman himself had been competent and had claimed or exercised any such right or privilege; and no limitation of time provided in any of the foregoing sections shall run

so long as said incompetent workman has no guardian.

Sec. 14. This act shall take effect on the first day of September, 1912; and ten days from and thereafter, it shall be taken and held in law that all workmen then in the employ, and all workmen afterwards employed by an employer at manual and mechanical labor of the kinds defined in Sec. 3 of this act, are employed and working under this act, and the employer and workman shall alike be bound by and shall have each and every benefit and right given in this act the same as if a mutual contract to that effect were entered into between the employer and the workman at any time before the happening of the accident. It shall be lawful, however, for the employer or workman to disaffirm an employment under the provisions of this act by written contract between them, or by written notice by one to, and served upon, the other to that effect before the day of the accident;

Provided, such written contract does not provide for less compensation than is provided in this act. And in the absence of such written contract or written notice, served as above provided, it shall be taken and held that the employment and service is under the act; and the same shall be the sole measure of their respective rights and liabilities when and as provided in this act;

Provided, if, after the accident, either the employer or the workman shall refuse to make or accept compensation under this act or to proceed under or rely upon the provisions hereof for relief, then the other may pursue his remedy or make his defense under other existing statutes, the state constitution, or the common law, except as herein provided, as his rights may at the time exist. Any suit brought by the workman for a recovery shall be held as an election to pursue such remedy exclusively.

Sec. 15. Any employer employing workman (workmen) to perform labor or services of other kinds than

as defined in this act, and such workmen and employes may, by agreement, at any time during the employment, accept and adopt the provisions of this act as to liability for accident, compensation, and the methods of paying and securing and enforcing the same. And in every such case the provisions of this act shall be taken in law and fact to bind the parties as fully as if they were specially mentioned and embraced in the provisions of this act.

Sec. 16. This act is remedial in its purpose and shall be construed and applied so as to secure promptly and without burdensome expense to the workmen the compensation herein provided and apportioned so as to provide support during the periods named for the loss of ability to earn full wages.

Sec. 17. Nothing in this act shall be deemed or taken to repeal or effect in any way any other acts or laws passed by the first legislature of the State of Arizona, and as in so far as it refers to the same subject in other acts it shall be deemed to be accumulative only.

## CHAPTER XXIII.

### THE MARYLAND COMPENSATION ACT.

Sec.

376. Nature and scope of act.

376a. Text of Maryland act.

Sec.

376b. Formal procedure.

§ 376. **Nature and scope of act.**—The Maryland act is a voluntary insurance law. It allows the employer and employé to enter into a contract of insurance which, when fulfilled, relieves the employer from liability for injuries to employés. The insurance is effected in approved casualty companies. Compensation is paid regardless of negligence and is lost only through the deliberate and willful negligence of the employé or his intoxication. The employer and employé contribute in equal proportions to the fund. The premium of the employé may be deducted from his wages. Controversies are settled through arbitration. The state commissioner of insurance acts in a supervisory capacity.

§ 376a. **Text of Maryland act.**—The Maryland statute on this subject was approved April 15, 1912, and became effective at once. It provides:

Section 1. Be it enacted by the general assembly of Maryland, That it shall be lawful for any employer to make a contract in writing with any employé whereby the parties may agree that employé shall become insured against accident occurring in the course of employment which results in personal injury or death, in accordance with the provisions of this act, and that in consideration of such insurance the employer shall be relieved from the consequences of acts or omissions by reason of which he would without such contract become liable toward such employé or toward the legal repre-

sentative, widow, widower. or next of kin of such employé.

Sec. 2. Such insurance shall be effected in some casualty company organized under the laws of the State of Maryland or admitted to do business in this state, provided that any employer employing not less than fifteen hundred (1500) employés may establish an insurance fund from sums contributed by himself and his employés upon condition that he undertake and agree to make up any deficiency in insurance benefits that may arise out of the inadequacy of such fund. Such fund shall be inviolably appropriated as a trust fund for the purposes of such insurance and shall not be invested otherwise. Provision shall be made for the election by the insured employés of an advisory committee, which shall be kept informed regarding the state of the insurance fund, and shall have the right to examine the books kept in connection therewith. Such books shall also be subject to the inspection of the insurance commissioner of this state in the same manner as books of insurance companies doing business in this state.

Upon the request of the employer or upon the request of the advisory committee, the insurance commissioner shall act as depository of the securities in which such funds may be invested.

If any employer desires to discontinue an insurance fund maintained by him, or if he discontinues his business without transferring the same to a successor or assign, taking over and agreeing to maintain such fund, he shall notify the insurance commissioner of his purpose, who shall thereupon supervise the disposition of the insurance fund. Such fund shall be distributed among those equitably entitled to it according to their contribution (not taking into consideration expenses of the management), and where those entitled to any part of the fund can not be discovered or ascertained the money remaining unclaimed shall be paid into the in-



insurance department, to be held and disposed of as may be provided by law.

The insurance commissioner shall be entitled to be paid out of such fund the reasonable expenses of his supervision, including a compensation not to exceed ten dollars per day for the time of any person or persons (other than a salaried employé of his office) employed by him for the purpose of such supervision necessarily spent in connection therewith.

### **Compensation Regardless of Negligence.**

Sec. 3. Such insurance shall cover the risk of personal injury by accident arising out of and in course of the employment resulting in death, provided death occur within twelve months from the time of such injury, or resulting in disability, whether the same be total or partial, permanent or temporary. But no one shall be entitled to any benefit hereunder where the injury is the result of the employé's intoxication, or wilful and deliberate act or deliberate intention to produce such injury.

Sec. 4. The insurance in case of death shall be for the benefit of such persons being the widow, widower, father, mother, son or daughter, as are dependent wholly or in part for their support upon the earnings of such employé (all of which persons are hereinafter designated as dependents of such employé), or of such of them as may be named in the contract or policy to which it refers and the person for whose benefit such insurance is made should be bound by the agreement authorized by the first section of this act.

Sec. 5. In order to satisfy the requirements of this act, the benefits payable under such insurance shall be at least as follows:

(I) In case of death:

(a) If the employé insures for the benefit of any dependent wholly dependent upon his wages at the

time of his death, a sum equal to his wages in the employment of said employer during a period of three years next preceding the accident, but not less in any case than the sum of one thousand dollars; provided, that the amount of any weekly payment made under such insurance or any lump sum paid in redemption thereof, may be deducted from such sum; and if the period of the employé's employment by said employer has been less than said three years, then the amount of his earnings during said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment by said employer.

(b) If the employé insures for the benefit only of persons partly dependent upon his wages at the time of his death, then a sum equal to the payment provided for the benefit of persons wholly dependent, less six times the average annual earnings; or if employed for less than a year, then less three hundred times the average weekly earnings of said dependent person or persons partly dependent on his wages.

(c) If the employé leaves no dependents, then the reasonable expenses of his medical attendance shall be paid, and in addition burial expenses not less than seventy-five dollars nor more than one hundred dollars.

And the contract or policy therein referred to may provide for the payment, instead of a lump sum, of a weekly sum which, in the case of persons wholly dependent, shall not be less than the weekly payment in case of total disability hereinafter provided for, and which, in case of persons partly dependent, shall not be less than the weekly payment in case of total disability, less the amounts earned by the persons partly dependent, and which sum may be divided between the dependent in such a manner as such contract or policy may provide or as may otherwise be agreed upon; or such contract or policy may provide for a combination of

lump sums, weekly payment, or for the substitute of one for the other.

(II) In case of injury not resulting in death, when total disability results from the injury, a weekly payment during the period of such disability shall be paid to the insured, which shall not be less than fifty per cent. of his average weekly wages during the previous twelve months, if he has been so long employed by the contracting employer; if not, then a weekly benefit during such shorter period as he has been in the employment of said employer.

(III) In case of injury not resulting in death, where partial disability results, such weekly payments shall be made during the period of such partial disability as is equal to the difference between the weekly benefit payment during the period of total disability and average amount which the injured person is able to earn after the accident.

Loss by actual separation at or above the wrist or ankles of both hands or both feet, or of one hand and one foot, or the irrevocable loss of both eyes, shall be deemed to be equal to total disability.

The loss by actual separation at or above the wrist or ankle of one hand or one foot shall be equal to one-half of total disability, and the loss of one eye shall be equal to one-fifth of total disability. Total disability shall be deemed to mean inability to carry on any gainful occupation.

The contract or policy herein referred to may provide that no benefits shall be paid in case of any injury which does not incapacitate the employé for a period of at least one week from earning full wages at the work at which he was employed at the time of the accident.

Sec. 6. Any contract in order to satisfy the requirements of this act shall provide that the employer shall contribute not less than fifty per cent. of the insurance

premiums and the employés shall contribute the remainder of the premiums.

In case the employer provides any insurance fund out of contributions made by himself and his own employés as above provided, such employer shall pay the whole of the expenses of the management of such fund, and all contributions shall be paid into such fund without any deduction by reason of such expense.

Sec. 7. The contract may provide that upon penalty of forfeiture of the benefits of the insurance, the employé shall give reasonable and timely notice to his employer, to be fixed by the terms of this contract, of any accident which may entitle him to the benefit of such insurance; and that he shall submit himself to medical examination as required by the employer at the employer's expense.

Sec. 8. The contract may provide that the premium payable by the employés shall be deducted from their wages.

An employer who shall wilfully and feloniously appropriate the amounts so deducted from the wages to any use other than the payment of insurance premium as stipulated in the contract, shall be guilty of embezzlement and shall be punished accordingly.

Sec. 9. The contract between the employer and employé may provide that the insurance premiums shall be paid into the hands of a treasurer to be elected or appointed by the employés or by the employer and the employés in such manner and under such voting arrangement as the contract may specify.

The payment of the premiums to the treasurer shall relieve the employer, and the penalty above prescribed for misappropriation of the funds required to be applied to insurance shall apply to such treasurer.

Sec. 10. In case of non-payment of the premiums within one month after the same are payable, the insurance company shall within two months after the ex-

piration of such month send notice of such default by mail to the insured and to the insurance commissioner of the state.

The insurance policy or contract between the employer and employé may specify a shorter period than the one herein provided for.

Until the required notice shall have been sent, the policy shall not be forfeited for non-payment of the premium.

Sec. 11. The employer may also advance the premiums of insurance for such number of employés and at such rates as may be agreed upon between him and the insurance company, and may thereupon be supplied by the insurance company with blank policies to be filled in by him with name of any beneficiary under the provisions of this act, and to be executed by him as agent of such company, and he may thereupon reimburse himself for the amounts payable by the employé by deducting the same from the wages of such employé.

Sec. 12. Such contract may provide that upon termination of his employment from any cause whatever the employé and his dependent shall cease to be entitled to the benefits of such insurance except as regards accidents occurring before the termination of his employment.

### **Arbitration.**

Sec. 13. Such contract may provide that any controversy regarding the extent of disability or the extent of dependency, or any controversy between dependents as to the amounts payable to them respectively, shall be settled by arbitration, the arbitrators to be named by mutual consent of the parties; and should the parties fail to agree upon an arbitrator, then the arbitrator to be named by a judge of the Circuit Court of the county, or city of Baltimore, in which the accident happened, and the award of such arbitrator shall be binding upon both employé or his dependents, as the case may be.

Sec. 14. Any insurance paid in accordance with the provisions of this act shall not be liable to attachment by trustee, garnishee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process or by operation of law, to pay any debt or liability of the insured or any beneficiary, nor shall any claim to insurance money be assignable by payee before the same is paid.

Sec. 15. A contract of insurance in pursuance of the terms of this act shall not relieve the employer from liability for any accident directly due to his failure to supply any safeguard required to be provided for the protection of employées, by or pursuant to any statute or ordinance, or any regulation under any statute or ordinance, unless it shall have been impossible to comply with such requirement by the time the accident happened, or unless the enforcement thereof has been suspended by order of court of competent jurisdiction.

Sec. 16. Every employer shall file with the insurance commissioner a copy of the form of contract and policy which he shall use under the provisions of this act, and in the event of such form being departed from in any particular case shall also file a copy of such particular contract.

If he shall fail to do so, he shall be liable to a penalty of fifty dollars in each case, to be recovered in an action of debt in the name of the State.

Sec. 17. A quarterly report of all settlement and payment of insurance benefits shall be filed by the employer with the insurance commissioner. If such employer shall fail to make such report in thirty days after demand by insurance commissioner, he shall be liable to a penalty of fifty dollars, to be recovered in an action of debt in the name of the State.

Sec. 18. The insurance commissioner shall prepare blanks of contract and policy complying with the pro-

visions of this act, and shall distribute the same, upon application, free of charge.

Sec. 19. Nothing in this act contained shall be construed as authorizing any employer, any officer or agent of such employer to require any employé or any person seeking employment, as a condition of such employment or of the continuance of such employment, to enter into a contract, or to continue in such contract, such as is authorized to be made by section 1 of this act.

Sec. 20. All provisions in the statutes inconsistent with this act are hereby repealed.

Sec. 21. This act shall take effect and be in force from the date of its passage.

**§ 376b. Formal procedure.**—The act imposes upon the commissioner of insurance the duty to prepare and distribute two forms. These forms are the contract and the policy complying with the provisions of the act.<sup>1</sup>

<sup>1</sup>Insurance Commissioner W. M. Shehan, of Maryland, under date of November 8, 1912, states that as yet no application has been made to the Insurance Department for forms of contract, or policy. As soon as some concrete case calls for their use, these forms will be prepared.





## CHAPTER XXIV.

### FEDERAL COMPENSATION ACTS FOR ARTISANS AND LABORERS INJURED IN THE SERVICE OF THE GOVERNMENT.

- | Sec.  | Sec.  |
|---|---|
| 377. Nature and scope of act.                             | 391. Form of request for medical examination to secure continuance of compensation beyond six months. |
| 378. Text of act of 1908.                                 |   |
| 379. Text of act of 1911.                                 |   |
| 380. Text of act of 1912.                                 |   |
| 381. Rules and regulations.                               |   |
| 382. Formal procedure under the Federal acts.             | 392. Form of report of discontinuance of compensation payments.                                       |
| 383. Form of notice of right to compensation.             | 393. Procedure in case of death.  |
| 384. Forms of filing claims.                              | 394. Form of claim for compensation on account of death.  |
| 385. Procedure in case of disability.                     | 395. Form of notice of right to compensation.   |
| 386. Form of immediate report of injury.                  | 396. Construction of the Federal acts.  |
| 387. Form of report of termination of disability.         | 397. "Injury" and "accident" defined.   |
| 388. Form of report of death from injury.                 | 398. "Injury" and "Disease without injury"—Disease contracted in the course of employment.            |
| 389. Form of claim for compensation on account of injury. | 399. "In the course of such employment" defined.  |
| 390. Form of certificate of disability.                   |   |

§ 377. **Nature and scope of act.**—The Federal act is designed for the protection of artisans and laborers in the employ of the government in its manufacturing establishments, arsenals and navy yards, in the construction of river and harbor and fortification work, in hazardous employment on construction work in the reclamation of arid lands, and in hazardous employment under the Isthmian Canal Commission. Compensation is provided for all such persons injured or killed in the course of their employment. Compensation is denied,

however, where the injury does not continue more than fifteen days and in cases where the injuries are the result of the negligence or misconduct of the employé. The administration of the act and its construction are under the control of the secretary of commerce and labor.

**§ 378. Text of act of 1908.**—The act of May 30, 1908 provides: That when, on or after August first, nineteen hundred and eight, any person employed by the United States as an artisan or laborer in any of its manufacturing establishments, arsenals, or navy yards, or in the construction of river and harbor or fortification work or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, or in hazardous employment under the Isthmian Canal Commission, is injured in the course of such employment, such employé shall be entitled to receive for one year thereafter, unless such employé, in the opinion of the secretary of commerce and labor, be sooner able to resume work, the same pay as if he continued to be employed, such payment to be made under such regulations as the secretary of commerce and labor may prescribe: Provided, That no compensation shall be paid under this act where the injury is due to the negligence or misconduct of the employé injured, nor unless said injury shall continue for more than fifteen days. All questions of negligence or misconduct shall be determined by the secretary of commerce and labor.

Sec. 2. That if any artisan or laborer so employed shall die during the said year by reason of such injury received in the course of such employment, leaving a widow, or a child or children under sixteen years of age, or a dependent parent, such widow and child or children and dependent parent shall be entitled to receive, in such portions and under such regulations as the secretary of commerce and labor may prescribe, the

same amount, for the remainder of the said year, that said artisan or laborer would be entitled to receive as pay if such employé were alive and continued to be employed: Provided, That if the widow shall die at any time during the said year her portion of said amount shall be added to the amount to be paid to the remaining beneficiaries under the provisions of this section, if there be any.

Sec. 3. That whenever an accident occurs to any employé embraced within the terms of the first section of this act, and which results in death or a probable incapacity for work, it shall be the duty of the official superior of such employé to at once report such accident and the injury resulting therefrom to the head of his bureau or independent office, and his report shall be immediately communicated through regular official channels to the secretary of commerce and labor. Such report shall state, first, the time, cause, and nature of the accident and injury and the probable duration of the injury resulting therefrom; second, whether the accident arose out of or in the course of the injured person's employment; third, whether the accident was due to negligence or misconduct on the part of the employé injured; fourth, any other matters required by such rules and regulations as the secretary of commerce and labor may prescribe. The head of each department or independent office shall have power, however, to charge a special official with the duty of making such reports.

Sec. 4. That in the case of any accident which shall result in death, the persons entitled to compensation under this act or their legal representatives shall, within ninety days after such death, file with the secretary of commerce and labor an affidavit setting forth their relationship to the deceased and the ground of their claim for compensation under the provisions of this act. This shall be accompanied by the certificate of

the attending physician setting forth the fact and cause of death, or the nonproduction of the certificate shall be satisfactorily accounted for. In the case of incapacity for work lasting more than fifteen days, the injured party desiring to take the benefit of this act shall, within a reasonable period after the expiration of such time, file with his official superior, to be forwarded through regular official channels to the secretary of commerce and labor, an affidavit setting forth the grounds of his claim for compensation, to be accompanied by a certificate of the attending physician as to the cause and nature of the injury and probable duration of the incapacity, or the nonproduction of the certificate shall be satisfactorily accounted for. If the secretary of commerce and labor shall find from the report and affidavit or other evidence produced by the claimant or his or her legal representatives, or from such additional investigation as the secretary of commerce and labor may direct, that a claim for compensation is established under this act, the compensation to be paid shall be determined as provided under this act and approved for payment by the secretary of commerce and labor.

Sec. 5. That the employé shall, whenever and as often as required by the secretary of commerce and labor, at least once in six months, submit to medical examination, to be provided and paid for under the direction of the secretary, and if such employé refuses to submit to or obstructs such examination his or her right to compensation shall be lost for the period covered by the continuance of such refusal or obstruction.

Sec. 6. That payments under this act are only to be made to the beneficiaries or their legal representatives other than assignees, and shall not be subject to the claims of creditors.

Sec. 7. That the United States shall not exempt itself from liability under this act by any contract, agree-

ment, rule, or regulation, and any such contract, agreement, rule, or regulation shall be pro tanto void.

Sec. 8. That all acts or parts of acts in conflict herewith or providing a different scale of compensation or otherwise regulating its payment are hereby repealed.

**§ 379. Text of act of 1911.**—The act of March 4, 1911, extends the benefits of the preceding act to all employés of the Isthmian Canal Commission without reference to the hazard of their employment; it also confers the administration of the act, so far as it relates to employés of the Commission, or the chairman of said Commission. It provides:

Sec. 5. Hereafter the act granting to certain employés of the United States the right to receive from it compensation for injuries sustained in the course of their employment shall apply to all employés under the Isthmian Canal Commission, when injured in the course of their employment; and claims for compensation on account of injury or death resulting from an accident occurring hereafter shall be settled by the chairman of the Isthmian Canal Commission, who shall, as to such claims and under such regulations as he may prescribe, perform all the duties now devolving upon the secretary of commerce and labor: Provided, That when an injury results in death claim for compensation on account thereof shall be filed within one year after such death.

**§ 380. Text of act of 1912.**—The provisions of the act of 1908 are extended by the amendment of March 11, 1912 to include the employés of the department of mines and forestry. It provides:

That the provisions of the act approved May thirtieth, nineteen hundred and eight, entitled "An act granting to certain employés of the United States the right to receive from it compensation for injuries sustained in the course of their employment," shall, in addition to the classes of persons therein designated, be

held to apply to any artisan, laborer, or other employé engaged in any hazardous work under the Bureau of Mines or the Forestry Service of the United States: Provided, That this act shall not be held to embrace any case arising prior to its passage. An act of July 27th of the same year, authorizing additional aids to navigation in the lighthouse service provides that the benefit of this act "shall be extended to persons employed by the United States in any hazardous employment in the lighthouse service."

**§ 381. Rules and regulations.**—The department has prescribed certain necessary regulations concerning the duties of employés, official superiors and medical officers. The rules as to the duties of employés are as follows:

1. Reports of Injuries.—Whenever any injury is sustained by an employé in the course of his employment, he shall immediately report the same to his official superior, if he is able to do so, giving also a statement of the facts and the names of witnesses, if any.

2. First-aid Treatment.—No matter how slight the injury sustained, the injured employé shall immediately apply to the dispensary or medical officer, if there be one, for examination and for first-aid treatment, and it shall be the duty of his official superior to direct him to do so.

3. Reports of Disability.—In case the disability arises some time after the injury has been received, it shall be the duty of the injured employé to notify his official superior within 48 hours from the beginning of such disability.

4. Treatment.—It shall be the duty of each injured employé intending to take advantage of the provisions of the act to obtain necessary medical and surgical treatment and to comply with all reasonable orders for treatment and conduct which the attending physician may

give. He shall also submit to such medical examinations as his official superior may from time to time direct.

5. Notices of Continuing Disability.—Every employé injured in the course of employment who is unable to return to work because of such injury, shall, within 24 hours, inform his official superior of such fact, either in person or by mail, telephone, or messenger. Such notice shall be given by the injured employé or for him every week, unless, in the opinion of the official superior, the permanent nature of the injury makes this notice unnecessary. Such notice should state when the injured employé was last seen by his attending physician.

6. Examinations.—For the purpose of the medical examinations prescribed by the act, the injured employé shall appear at the dispensary of the establishment whenever directed to do so; but if he claims to be unable to present himself for such examination the medical officer or other officially designated physician may call at the residence of the injured employé in order to make an examination. The injured employé shall be entitled to have his attending physician present during such examination.

7. Disagreements.—If the injured employé refuses to accept the opinion of the official examining physician as to his ability to resume work, either because of a different opinion held by his private physician or for any other reason, the employé shall immediately so report to his official superior, who will in turn report the same to the secretary of commerce and labor.

8. Examinations by Order of the Department of Commerce and Labor.—On receipt of reports concerning disagreement between the claimant or his physician and the official examining physician, the secretary of commerce and labor will immediately order an examination of the claimant by a physician designated by him, so as to ascertain the claimant's physical condi-

tion; and if the employé refuses to submit to or obstructs such examination the right to compensation shall be lost for the period covered by the continuance of such refusal or obstruction.

9. Claims.—The claim, properly filled out, must be presented by the injured employé to his official superior, who shall forward the same, with the statements of witnesses, if there were witnesses, through the regular official channels for transmission to the secretary of commerce and labor.

10. Certificates.—In cases of continuing disability the injured employé shall furnish such medical certificates from time to time as the official superior may require.

11. Disregard of Instructions.—Where an injured employé shall fail to make any of the reports prescribed in these regulations, or refuses to submit himself to examination by the medical officer or other officially designated physician, when ordered by his official superior to do so, such refusal or failure will be considered by the secretary of commerce and labor as presumptive evidence against his right to compensation under the law.

The rules as to the duties of official superiors are as follows:

12. Record of Accident.—Whenever an accident causing injury to an employé comes to the knowledge of the person in charge of such employé he should immediately secure a record of the cause and nature of the accident and the nature and extent of the injury, however slight. The names and testimony of witnesses should also be secured, and the employé directed to apply to the dispensary or medical officer, if there be one, for examination and first-aid treatment.

13. Reports of Injuries.—All injuries which prevent the employé from performing work for one day or longer should be reported to the secretary of com-



merce and labor by the official superior of such employé, on the form provided for that purpose, within 48 hours after such injuries have been brought to the notice of such official superior. The reports called for in paragraphs numbered 1, 3, 13, 14, and 16 should be made for all employés regardless of the application of the provisions governing compensation.

14. Report of Termination of Disability.—Whenever a person who has been reported disabled by an accident is able to return to work his official superior should immediately report the termination of such disability to the secretary of commerce and labor on the proper form.

15. Disagreements.—The official superior should make immediate report directly to the secretary of commerce and labor of all cases of disagreement between the injured employé and the official examining physician as to the ability of the employé to resume work.

16. Report of Death.—Whenever an injury received in the course of employment results in death, either immediately or within one year thereafter, such death should be reported on the proper form as soon as possible after the knowledge of such death reaches the official superior of the deceased employé.

17. Blanks to be Furnished.—Whenever the official superior of an injured employé has reason to believe from the statement of the medical officer or other officially designated physician, or from any other evidence, that disability has lasted more than 15 days, he should furnish such employé with a blank form for claim and call his attention to the provisions of the compensation act. Blank forms should be furnished upon request to any employé wishing to make a claim.

18. Indorsement of Claims.—The official superior or other person designated should either fill out and sign the certificate of approval provided for that pur-

pose, or indicate the reasons for his refusal to give his approval. In either case, statements of witnesses, if any, and copies of the records of the examination of the claimant by the medical officer or officially designated physician, if such examinations have been made, should be attached to the claim, and the entire record submitted to the secretary of commerce and labor, to whom the determination of the validity of all claims is committed by the act.

19. Claims to be Forwarded.—All claims for compensation when filled out and presented by injured employés to their official superiors should be forwarded by them through the regular official channels for transmission to the secretary of commerce and labor. No letter of transmittal is necessary. All information desired should be made part of the indorsement on such claims.

20. Approval or Disapproval.—Notice of the approval or disapproval of claims will be forwarded from the office of the secretary of commerce and labor to the heads of the respective departments or independent office, for transmittal to the official superior of the employé.

21. Payments.—Payments under this law should be made at the regular intervals at which salaries are paid to all employés, except payments accrued before the receipt of the approved claim, which should be made as soon after the receipt of the approval as possible so as to avoid unnecessary hardship to the employé. If subsistence is furnished during employment but not during the period of disability, the value of the subsistence should be allowed to the injured workman during disability in addition to the wages usually paid in cash.

When compensation is approved for a fixed period, payments may be made on the authority of such approval without further evidence.

When compensation is approved for an indefinite

period, each payment shall be based upon the certificate signed by the claimant and approved by the claimant's official superior to the effect that during the time covered by the said payment the claimant was unable to resume work and that inability to so resume work was the result of the injury for which compensation was granted.

In no case shall annual leave be charged against any portion of the period for which compensation is due.

22. **Certificates.**—If the claimant's superior officer is unable to satisfy himself that the claimant was unable to resume work for any period for which compensation is claimed, he may require that the claimant submit to him a certificate from a duly authorized medical practitioner showing the continuance of the inability to resume work.

23. **Special Examinations.**—If this medical certificate is satisfactory to the official superior, he should then approve payment; but if the certificate does not satisfy him he may require the medical officer or officially designated physician, where such is available, to examine the claimant for the purpose of ascertaining whether the disability still exists.

24. **Payments Withheld.**—In all cases where the continuance of disability has not been proved to the satisfaction of the superior officer, or where the results of the examination of the claimant by the medical officer or officially designated physician are contradictory to the statements of the attending physician, payments should be withheld and a report of these facts should be immediately forwarded directly to the secretary of commerce and labor. A detailed report of the examination of the claimant by the medical officer or officially designated physician, if any has been made, should accompany this report, together with the statement of the employé and a certificate of his attending physician.

25. **Examination by Physician of Depart-**

ment of Commerce and Labor.—On receipt of reports concerning disagreement between the claimant or his physician and the official superior, the secretary of commerce and labor will immediately order an examination of the claimant by a physician designated by him, so as to ascertain the claimant's ability to return to work.

26. Decision.—The decision of the department will then be communicated to the official superior. If the claim of the injured person be sustained, the amount due him should be paid as soon as possible after the receipt of the decision.

27. Discontinuance of Payments.—When payments are discontinued because of recovery or other reason, such fact should be reported to the department of commerce and labor on the blanks furnished for that purpose.

28. Examination at End of Six Months.—Whenever compensation has been paid for any case of disability for five months and there is a possibility of the disability lasting so as to extend over six months, the official superior of the injured employé should report the fact to the secretary of commerce and labor, so as to enable him to order as soon as possible a medical examination.

29. Death.—Whenever a person in the employ of the government shall die as the result of injury received in the course of his employment, and his wife, his children under 16 years of age, or his parents desire to claim payment under this act, they should be furnished with blank forms of claim for compensation. If the official superior has reason to believe that the person so injured is covered by the provisions of the law he should inform the dependent relatives, if the names and addresses of such relatives can be ascertained by him, of the necessary procedure under the law and the provision as to the 90-day limit.

If the persons who may be entitled to compensation

on account of the death of an employé are located in a foreign country, they may file their affidavits of claim, respectively, with the consular officer of the United States located most conveniently, and any affidavit so filed within 90 days after the death will be considered as having been duly filed with the secretary of commerce and labor, as required by section 4 of the compensation act.

30. Death Benefits.—Claims for compensation on account of death should be forwarded to the secretary of commerce and labor. If the claim be established and compensation is due to more than one person the secretary of commerce and labor will designate the portion to be paid to each claimant.

31. Employés to Have Laws and Regulations.—Copies of the law and the regulations should be on hand in each establishment and, upon request, furnished free to all employés for their information and guidance.

A summary prepared by the secretary of commerce and labor, presenting the principal provisions of the compensation act and the regulations governing its application, should be posted in establishments affected by the act, in such numbers and places as to be easily accessible to all the workmen.

The duties of medical officers are as follows:

32. First-Aid Treatment.—The medical officer of each establishment or his assistant, where such services are available, should render such immediate aid as is necessary to each employé of the establishment injured while on duty, and make a report to the head of the establishment of the exact extent of the injury and the nature of the treatment administered, and a detailed record of the same should be kept on file in his office.

33. Subsequent Examinations.—The medical officer or officially designated physician should examine the injured employé as frequently as is necessary in his

opinion or in the opinion of the head of the establishment during the absence of such employé from his work.

34. Records.—A record of each examination by the medical officer or officially designated physician should be made in detail and contain an accurate description of the general condition of the employé, the state of the injuries, and an opinion as to whether the disability still continues. Such record should be kept on file in the office of the medical officer or officially designated physician, and reports of the findings should be made to the head of the establishment.

35. Treatment.—The medical officer or officially designated physician should ascertain whether the injured employé is under treatment of a duly licensed practitioner of medicine, and if he finds this not to be the case he should inform the injured employé of the necessity of medical attendance whenever such necessity exists.

36. Opinion as to Termination of Disability.—The medical officer or officially designated physician making any examination should inform the injured employé of his opinion concerning the continuance or termination of disability.

§ 382. Formal procedure under the Federal acts.—The Department of Commerce and Labor, Bureau of Labor, has prescribed the following forms for use in administering the compensation act: (1), Immediate report of injury; (2), Report of termination of disability; (3), Report of death from injury; (4), Claim for compensation on account of injury; (5), Certificate of disability; (6), Request for medical examination; (7), Report of discontinuance of compensation payments; (8), Claim for compensation on account of death; (9), Notice of right to compensation (for posting).

A supply of these forms will be furnished each department and independent establishment by the secre-

tary of commerce and labor, upon request. Official superiors should procure necessary forms from the head of their department, bureau, or establishment.

**§ 383. Form of notice of right to compensation.**—By an act of Congress of May 30, 1908, as amended by later enactments, any person employed by the United States as an artisan or laborer in any of its manufacturing establishments, arsenals or navy yards, or in the construction of river and harbor or fortification work, or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, any employé under the Isthmian Canal Commission, and any artisan, laborer, or other employé engaged in any hazardous work under the Bureau of Mines or the Forestry Service of the United States, shall, if injured in the course of such employment, be entitled to receive during disability the same pay as if he had continued to be employed. This payment may not extend beyond one year from the beginning of the disability.

To give a right to compensation, the disability must continue for more than fifteen days, and must not be due to the negligence or misconduct of the injured employé.

If the injury results in death, the widow, child or children, under sixteen years of age, or dependent parents of the deceased employé have the same right to compensation that the employé would have had if he had lived. In case of death, claims must be filed within ninety days after the death takes place, except for employés under the Isthmian Canal Commission.

All questions of negligence or misconduct shall be determined by the secretary of commerce and labor, who is charged with the administration of the law, except in its application to employés of the Isthmian Canal Commission.

Where an employé is entitled to compensation under this act, no sick or annual leave should be taken instead of such compensation.

**§ 384. Forms of filing claims.**—Blank forms for filing claims are furnished by the secretary of commerce and labor, and may be obtained from the persons who have a supervision over the employés in the branches of service covered by the act. These are to be furnished to all persons believing themselves entitled to compensation under the act

**§ 385. Procedure in case of disability.**—When an artisan or laborer believes himself entitled to compensation under this act, he must make out a claim for compensation, accompanied by certificates from a duly qualified physician and from his official superior, on the forms provided.

The claim and certificates should be promptly filed with the official superior of the claimant, and that official will then forward them through the regular channels to the secretary of commerce and labor.

If the claim is approved by the secretary of commerce and labor, the injured employe will be entitled to payment of compensation during disability, but not exceeding one year, the same as if he had continued to be employed.

In order to secure this compensation the injured employé on each pay day must file with the disbursing officer a certificate that he is still unable to resume work, which certificate must be approved by his official superior, and, if required, by a physician cognizant of the claimant's physical condition.

**§ 386. Form of immediate report of injury. (1)<sup>1</sup>**

1. Department.....; 2. Bureau or office.....

---

<sup>1</sup>To be submitted to the Secretary of Commerce and Labor, through official channels, not later than the second day after the occurrence of each case of injury interrupting work for one day or longer.



3. Plant in which injured person was employed-----  
 (Shop, yard, dock, etc.)
4. Location of plant (postoffice address) :-----
5. Full name of injured employé-----
6. Age----; 7. Sex----; 8. Conjugal condition----; 9. Race----
10. Occupation----; 11. Rate of pay at time of accident---per----

-----  
 (If subsistence is furnished, its value should be included in the above answer.)

12. Number of hours constituting a day's labor in occupation of injured employé-----
13. Time of accidental injury---(Date)---, --- (Day of week)---, --- (Hour)---
14. Place and character of work of injured person at time of injury-----
15. Description of the accident-----
- 
16. Nature and extent of injury-----
- 
17. Was the injury received in the course of the employment?-----
18. Was the injury due to negligence or misconduct on the part of the injured employé?-----

19. Eyewitnesses to accident:

Name.	Age.	Occupation.	Address.
-----	-----	-----	-----
-----	-----	-----	-----

20. Did injury result in immediate incapacity for work?-----; If not, when did incapacity begin?-----
21. Probable duration of incapacity for work due to injury-----  
 (Base answer on statement of injured person's physician if one is called.)
22. Name and address of physician who first attended injured person-----
23. Remarks: -----

The above report is made this-----day of-----, 191--, pursuant to regulations governing the application of the Act of May 30, 1908.

Signature of person making report: -----  
 Title: -----

### § 387. Form of report of termination of disability. (2)<sup>2</sup>

<sup>2</sup>To be submitted to the Secretary of Commerce and Labor, through official channels, immediately upon termination of disability of an employé whose injury was previously reported.



18. Was the injury due to the negligence or misconduct of the deceased employé?\_\_\_\_\_
19. Eyewitnesses to accident:
- | Name. | Age.  | Occupation. | Address. |
|-------|-------|-------------|----------|
| _____ | _____ | _____       | _____    |
| _____ | _____ | _____       | _____    |
20. Date of death\_\_\_\_\_, 191\_\_; Place of death\_\_\_\_\_
21. Immediate cause of death\_\_\_\_\_
22. Working time lost before death on account of injury\_\_\_\_\_days.
23. Wife of deceased: Name\_\_\_\_\_; Address\_\_\_\_\_
24. Children of deceased under 16 years of age:
- | Name. | Date of birth. |
|-------|----------------|
| _____ | _____          |
| _____ | _____          |
25. Parents of deceased:
- | Name.       | Address. |
|-------------|----------|
| Father_____ | _____    |
| Mother_____ | _____    |
26. Name and address of physician who attended deceased person: \_\_\_\_\_
27. Remarks: \_\_\_\_\_
- The above report is made this\_\_\_\_\_day of\_\_\_\_\_, 191\_\_, pursuant to regulations governing the application of the act of May 30, 1908.
- Signature of person making report: \_\_\_\_\_
- Title: \_\_\_\_\_

### § 389. Form of claim for compensation on account of injury. (4)<sup>3</sup>

The Secretary of Commerce and Labor, Washington, D. C.:

Sir—I hereby make claim for compensation on account of an injury sustained by me in the course of my employment, and without negligence or misconduct on my part, as stated below.

1. Full name of injured employé: \_\_\_\_\_
2. Age: \_\_\_\_\_; 3. Sex: \_\_\_\_\_; 4. Conjugal condition: \_\_\_\_\_
5. Address: \_\_\_\_\_
6. Occupation at time of injury: \_\_\_\_\_
7. Wages being earned at time of injury: \_\_\_\_\_ per \_\_\_\_\_  
(If subsistence is furnished, its value should be included in the above answer.)
8. Time of accidental injury: \_\_ (Date) \_\_\_; \_\_\_ (Day of week) \_\_\_; \_\_\_ (Hour) \_\_\_
9. Place and character of work at time of injury: \_\_\_\_\_
10. Description of the accident: \_\_\_\_\_

<sup>3</sup> To be filed with the official superior for transmittal to the Secretary of Commerce and Labor through official channels.

11. Names of witnesses: \_\_\_\_\_
12. Nature and extent of injury: \_\_\_\_\_
13. When did incapacity for work begin? \_\_\_\_\_
14. Are you now able to do your ordinary work? \_\_\_\_\_;  
if so, when were you first able to do such work? \_\_\_\_\_
15. Have you done any work outside of your regular employment  
since you were injured? \_\_\_\_\_; if so, what, and for  
how long? \_\_\_\_\_

I hereby certify that each and every statement set forth above  
is true to the best of my knowledge and belief.

\_\_\_\_\_  
Claimant.

\_\_\_\_\_  
\_\_\_\_\_ } ss.  
\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
191\_\_\_.

Signature of official administering oath: \_\_\_\_\_  
(Seal.) Title: \_\_\_\_\_  
In and for \_\_\_\_\_

#### STATEMENTS OF WITNESSES.

(In all cases where the circumstances of the accident and the  
fact of injury are not clear, or the statements of the official superior  
do not agree with those of the claimant, statements of witnesses as  
to the points involved should be furnished in the space below.)

Statement of \_\_\_\_ (Name) \_\_\_\_, \_\_\_\_ (Occupation) \_\_\_\_, \_\_\_\_ (Address) \_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### PHYSICIAN'S CERTIFICATE.

(If any of the information called for below can not be supplied,  
the physician should enter an explanation under "Remarks.")

1. Name of employé for whom certificate is given: \_\_\_\_\_
2. Date of first treatment: \_\_\_\_\_; 3. Date of last treatment: \_\_\_\_\_
4. Approximate number of treatments or visits during the above  
period: \_\_\_\_\_
5. Nature of illness or disability: \_\_\_\_\_
6. Extent and condition of the injury and the general condition of  
the patient at first examination: (Describe in detail, stating all  
objective and subjective signs and symptoms.) \_\_\_\_\_
7. Was any surgical treatment required? \_\_\_\_\_; if so,  
what? \_\_\_\_\_
8. Was the patient confined to bed? \_\_\_\_\_; if so, how  
long? \_\_\_\_\_
9. If not confined to bed, was he confined to his home? \_\_\_\_\_;  
if so, how long? \_\_\_\_\_

10. Was he disabled from performing his ordinary duties?-----; if so, when did such disability begin?-----
11. Has the patient sufficiently recovered to resume his occupation?-----; if so, on what date was he first able to resume work?-----; if not, how long in your opinion will the disability probably continue?-----
12. In your opinion are any permanent results from his injury probable?-----; if so, describe them in detail:-----
13. Has patient given you a history of accident?-----; if so, state it briefly: -----
14. In your opinion is the condition described above due to such injury as stated by the patient?-----
15. Remarks: -----

I hereby certify that each and every statement set forth above is true to the best of my knowledge and belief.

Signature of certifying physician: -----

Address: -----

Date of license to practice medicine: -----

Date of making certificate: -----, 191--

Note. It is very important that above certificate be furnished, but if for any cause it can not be secured, give full explanation below: -----

#### CERTIFICATE OF OFFICIAL SUPERIOR OF INJURED EMPLOYEE.

Department ----- Bureau or Office -----

Date, -----, 191--

1. Name of employé for whom certificate is furnished:-----
2. Occupation: -----; 3. Date of injury, -----, 191--
4. Description of the accident: -----
5. Was the injury received in the course of the employment?-----
6. Was the injury due to the negligence or misconduct of the employé?-----; if so, give full description of such negligence or misconduct: -----
7. Was the employé unable to perform his ordinary duties as a result of the injury? -----; if so, for what period was his absence from work due to such injury?  
From-----, 191--, to-----, 191--, inclusive.

#### SCHEDULE OF WORK SINCE INJURY.

(The schedule should cover all time from the date of injury to the date of this certificate.)

Employé was absent from work—                      Employé worked.

From—                      To—                      From—                      To—

Date	Hour.	Date.	Hour.	Date.	Hour.	Date.	Hour.
---, 19--	---m.	---, 19--	---m.	---, 19--	---m.	---, 19--	---m.
---, 19--	---m.	---, 19--	---m.	---, 19--	---m.	---, 19--	---m.

I hereby certify that each and every statement set forth above is true to the best of my knowledge and belief.

Signature of official superior: \_\_\_\_\_

Title \_\_\_\_\_

Note—It is very important that above certificate be furnished, but if for any cause this can not be done, give full explanation below:

### § 390. Form of certificate of disability. (5)<sup>4</sup>

\_\_\_\_\_, 191\_\_

The Secretary of \_\_\_\_\_ (Department in which employed) \_\_\_\_\_

Washington, D. C.

Sir—I hereby certify that I was absent from duty for a period of \_\_\_\_\_ days, from \_\_\_\_\_, 191\_\_, to \_\_\_\_\_, 191\_\_, both dates inclusive, and that during all this time I was unable to resume work by reason of an injury received in the course of my employment, on \_\_\_\_\_, 191\_\_, on account of which injury a claim for compensation under the act of May 30, 1908, was approved for payment by the Secretary of Commerce and Labor on \_\_\_\_\_, 191\_\_<sup>5</sup>

Claimant's signature: \_\_\_\_\_

Approved:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### § 391. Form of request for medical examination to secure continuance of compensation beyond six months. (6)<sup>6</sup>

\_\_\_\_\_, 191\_\_

The Secretary of Commerce and Labor,

Washington, D. C.

Sir—I hereby request that provision be made for an examination of my physical condition in order to determine my right to the continued receipt of compensation after \_\_\_\_\_, 191\_\_, in accordance with the provisions of Sec. 5 of the Act of May 30, 1908.

Name: \_\_\_\_\_

1. Department \_\_\_\_\_ 2. Bureau or Office \_\_\_\_\_

<sup>4</sup>To be filed with the disbursing officer by the employé whose claim for compensation under the act of May 30, 1908, has been approved.

<sup>5</sup>If the claimant's superior office is not satisfied that the claimant was unable to resume work for any period for which compensation is claimed, he may require that the claimant submit to him a certificate from a duly authorized medical practitioner showing disability during the period for which compensation is claimed.

<sup>6</sup>This form should be forwarded to the Secretary of Commerce and Labor through official channels.

3. Plant in which injured person was employed----- (Shop, yard, dock, etc.)-----
4. Location of plant (postoffice address)-----
5. Name-----
6. Address-----
7. Occupation at time of accident-----
8. Date of accident-----

### § 392. Form of report of discontinuance of compensation payments. (7)<sup>7</sup>

Department of-----  
 Bureau or Office-----  
 -----, 191--

The Secretary of Commerce and Labor,

Washington, D. C.

Sir—I hereby report that the payment of compensation on account of injury to the person named and described below has been discontinued on account of----- (Recovery of claimant, expiration of period, or death of beneficiary.)-----

Signature of person making report: -----  
 Title: -----

1. Full name of injured employé-----
2. Date of receipt of injury-----
3. Compensation was paid for period beginning-----, 191--, to-----, 191--, inclusive.
4. Working time for which compensation payments have been made-----days.
5. Total amount of compensation paid \$----- (If subsistence or commutation of subsistence was furnished during disability, the value or amount should be included.)-----
6. Remarks-----

**§ 393. Procedure in case of death.**—When an artisan or laborer who is included within the provisions of this act dies as a result of accidental injury received in the course of his employment, claims must be made by such of his dependents under the act, if any, as desire to claim the compensation provided. This claim, accompanied by a physician's certificate, if a physician was employed, and a certificate of the official superior of the

<sup>7</sup> To be submitted to the Secretary of Commerce and Labor through official channels by superior officers in all cases where payments of compensation under the act of May 30, 1908, have been discontinued.

deceased, all on the forms provided, should be promptly filed with the official superior for transmission through the regular channels to the secretary of commerce and labor.

**§ 394. Form of claim for compensation on account of death. (8)<sup>9</sup>**

The Secretary of Commerce and Labor,

Washington, D. C.

Sir—Claim for compensation under the provisions of the act of May 30, 1908, is hereby made by the undersigned, which claim is based upon the facts herein stated.

1. Full name of deceased employé on account of whose death claim is made: \_\_\_\_\_
2. Age\_\_\_\_\_ 3. Sex\_\_\_\_\_ 4. Occupation\_\_\_\_\_
5. Date of injury\_\_\_\_\_, 191\_\_ 6. Date of death\_\_\_\_\_, 191\_\_
7. Did deceased leave a widow?\_\_\_\_\_; if so, give name and address: Name\_\_\_\_\_; Address\_\_\_\_\_
8. Did deceased leave any children under sixteen years of age?\_\_\_\_  
If so, give name and date of birth of each:  

Name.	Date of birth.
_____	_____
_____	_____
9. Is the father of deceased living?\_\_\_\_\_; if so, give name and address:  
 (a) Name: \_\_\_\_\_  
 (b) Address: \_\_\_\_\_  
 (c) Did deceased contribute to his support within the past year? \_\_\_\_\_
10. Is the mother of deceased living?\_\_\_\_\_; if so, give name and address:  
 (a) Name: \_\_\_\_\_  
 (b) Address: \_\_\_\_\_  
 (c) Did deceased contribute to her support within the past year? \_\_\_\_\_

---

<sup>9</sup> Section 4 of the act of May 30, 1908, requires that claims for compensation on account of death shall be filed with the Secretary of Commerce and Labor within ninety days after such death. Those who are entitled to compensation under the law are: Wife, children under sixteen years of age, and dependent parents. Oaths of claimants residing in foreign countries should be made before a United States consular officer or secretary of legation; or, if before a local officer, a certificate of such United States consular officer or secretary of legation showing the authority of the local officer to administer oaths should be annexed.



## AFFIDAVIT OF CLAIMANTS.

(It is understood that no claim for compensation is made except by the persons whose names are signed thereto. Leave no space for names blank; the word "none" should be written wherever there is no person of the class indicated.)

----(I or we)----hereby certify that each and every statement set forth above is true to the best of ----(my or our)----knowledge and belief.

Signatures:

Widow: -----

Person signing on behalf of children: -----

-----  
Status or relationship: ----(Parent, grandparent, guardian, etc.)

Father: -----

Mother: -----

----- } ss.  
-----

Subscribed and sworn to before me this ----- day of -----, 191--

Signature of official administering oath: -----

Title: -----

(Seal.)

In and for -----

## AFFIDAVIT OF DEPENDENT PARENTS.

(To be executed in addition to the foregoing affidavit in case the parents, or either of them, make claim for compensation based upon their dependence upon deceased.)

1. Relation of deceased to—

(a) Father----(Son, stepson, adopted son.)----: (b) Mother  
----(Son, stepson, adopted son.) -----

2. Age of: (a) Father-----; (b) Mother-----

3. Amount of support received from deceased during the twelve months prior to his death, \$----- How often and in what amounts were the payments made?-----

4. Total income of claimants from all other sources during this period? -----

5. Value and character of property owned by claimants, \$-----

6. Did deceased live with parents during part year? State particulars: -----

7. Other facts showing dependence: -----

Signatures:

Father: -----

Mother -----

----- } ss.  
-----

Subscribed and sworn to before me this-----day of-----,  
191--

Signature of official administering oath: -----

(Seal.) Title: -----

In and for-----

### PHYSICIAN'S CERTIFICATE.

1. Name of deceased employé: -----
2. Dates on which employé was attended by certifying physician  
-----
3. Date of employé's death-----, 191--
4. Direct cause of death-----
5. Contributory cause of death-----
6. Was history of accident given in this case? If so, state it  
briefly: -----
7. In your opinion was the death of the employé due to such ac-  
cident? -----

I hereby certify that the answers to the above questions are  
true to the best of my knowledge and belief.

Date of making certificate: -----, 191--

Name of certifying physician: -----

Address: -----

Note—It is very important that above certificate be furnished,  
but if for any cause it can not be secured, give full explanation be-  
low and submit such other proof of death as may be obtainable.

### CERTIFICATE OF OFFICIAL SUPERIOR.

Department: -----; Location: -----

Service: -----; Date-----, 191--

1. Name of deceased employé: -----
2. Occupation-----; 3. Date of injury-----, 191--
4. Date of death-----, 191--
5. Description of accident: -----
6. Was the injury received in the course of the employment?----;  
If not, give full particulars: -----
7. Was the injury due to the negligence or misconduct of the em-  
ployé?-----; If so, give full description of such negli-  
gence or misconduct: -----
8. Was the death due to the accident described above?-----
9. Date on which claim was filed by claimants,-----, 191--  
With whom was claim filed?-----

I hereby certify that the answers to the above questions are true to the best of my knowledge and belief.

Signature of official superior: \_\_\_\_\_

Title: \_\_\_\_\_

Note—It is very important that above certificate be furnished, but if for any cause it can not be secured, give full explanation below:  
\_\_\_\_\_

### § 395. Form of notice of right to compensation. (9)

By an act of Congress of May 30, 1908, as amended by later enactments, any person employed by the United States as an artisan or laborer in any of its manufacturing establishments, arsenals or navy yards, or in the construction of river and harbor or fortification work, or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, any employé under the Isthmian Canal Commission, and any artisan, laborer, or other employé engaged in any hazardous work under the Bureau of Mines or the Forestry Service of the United States, shall, if injured in the course of such employment, be entitled to receive during disability the same pay as if he had continued to be employed. This payment may not extend beyond one year from the beginning of the disability.

To give a right to compensation, the disability must continue for more than fifteen days, and must not be due to the negligence or misconduct of the injured employé.

If the injury results in death, the widow, child or children under sixteen years of age, or dependent parents of the deceased employé have the same right to compensation that the employé would have had if he had lived. In case of death, claims must be filed within ninety days after the death takes place, except for employés under the Isthmian Canal Commission.

All questions of negligence or misconduct shall be determined by the Secretary of Commerce and Labor, who is charged with the administration of the law, except in its application to employés of the Isthmian Canal Commission.

Where an employé is entitled to compensation under this act, no sick or annual leave should be taken instead of such compensation.

#### BLANK FORMS FOR FILING CLAIMS.

Blank forms for filing claims are furnished by the Secretary of Commerce and Labor, and may be obtained from the persons who have supervision over the employés in the branches of service covered by the act. These are to be furnished to all persons believing themselves entitled to compensation under the act.

#### PROCEDURE IN CASE OF DISABILITY.

When an artisan or laborer believes himself entitled to com-

pensation under this act, he must make out a claim for compensation, accompanied by certificates from a duly qualified physician and from his official superior, on the forms provided.

The claim and certificates should be promptly filed with the official superior of the claimant, and that official will then forward them through the regular channels to the Secretary of Commerce and Labor.

If the claim is approved by the Secretary of Commerce and Labor, the injured employé will be entitled to payment of compensation during disability, but not exceeding one year, the same as if he had continued to be employed.

In order to secure this compensation the injured employé on each pay day must file with the disbursing officer a certificate that he is still unable to resume work, which certificate must be approved by his official superior, and, if required, by a physician cognizant of the claimant's physical condition.

#### PROCEDURE IN CASE OF DEATH.

When an artisan or laborer who is included within the provisions of this act dies as a result of accidental injury received in the course of his employment, claims must be made by such of his dependents under the act, if any, as desire to claim the compensation provided. This claim, accompanied by a physician's certificate, if a physician was employed, and a certificate of the official superior of the deceased, all on the forms provided, should be promptly filed with the official superior for transmission through the regular channels to the Secretary of Commerce and Labor. [This card should be kept posted permanently (preferably under glass) in a conspicuous place in each establishment or office.]

**§ 396. Construction of the Federal Acts.**—The acts which provide compensation for artisans and laborers injured in the service of the United States contain no provision for a court trial of cases arising thereunder. All matters connected with the application and administration of the acts are under the exclusive direction of the secretary of commerce and labor, who is advised by opinions of the attorney general of the United States on questions of construction.

**§ 397. "Injury and "accident" defined.**—The Attorney General of the United States in his opinion rendered May 17, 1909, in the application of Alfred A. Clark for compensation under the Federal Compensation Act finds that:

"A plate printer in the Bureau of Engraving and Printing whose right wrist was sprained in the course of his employment, and without misconduct or negligence on his part, which injury was complicated by a rupture of the synovial sac surrounding the ligaments leading from the back part of the forearm to the fingers, the injury continuing for more than fifteen days—suffered "an injury" within the meaning of the act of May 30, 1908 (35 Stat. 556), on account of which compensation may be paid.

The word "injury" in section 4 of that act is employed comprehensively, to embrace all the cases of incapacity to continue the work of employment, unless the injury is due to the negligence or misconduct of the employé injured, and includes all cases where, as a result of the employé's occupation, he, without any negligence or misconduct, becomes unable to carry on his work, and the condition continues for more than fifteen days.

The word "accident" is employed in that section to denote the happening of some unusual event producing death or injury which results in incapacity for work, lasting more than fifteen days.

An employé may, within the language of that statute, be injured in the course of his employment without having suffered a definite accident.<sup>10</sup>

In arriving at these conclusions the attorney general argues that "the statute quite consistently provides for the cases of injuries in the course of the employment and accidents resulting in death or otherwise. The word 'injury' is employed comprehensively to embrace all the cases of incapacity to continue the work of employment unless the injury is due to the negligence or misconduct of the employé injured—and including all cases where as a result of the employé's occupation he, without any negligence or misconduct, becomes unable to carry on his work and this condition continues for

more than fifteen days. The word 'accident' is employed to denote the happening of some unusual event, producing death or injury which results in incapacity for work, lasting more than fifteen days. That is to say, within the language of the statute an employé may be injured in the course of his employment without having suffered a definite accident. \* \* \* The modern tendency of courts has been to apply the term 'accident' to include all injuries arising out of the pursuit of claimant's employment which, without his own fault, incapacitate him from carrying on his labor."

He adopts the reasoning of the House of Lords in the case *Fenton, pauper, v. Thorley*,<sup>11</sup> arising under the British Compensation Act.

"There is, however, a recent decision of the court of session in Scotland, to which I would like to call your lordships' attention, and in which I agree entirely. It is the case of *'Stewart v. Wilson's and Clyde Coal Company (Limited)'* (5 Fraser 120). A miner strained his back in replacing a derailed coal hutch. The question arose, Was that an accident? All the learned judges held that it was. True, two of the learned judges expressed an opinion that it was 'fortuitous,' but they could not have used that expression in the sense in which it was used in *Hensey v. White*. What the miner did in replacing the hutch he certainly did deliberately and in the ordinary course of his work. There was nothing hazardous about it. Lord McLaren observed that it was impossible to limit the scope of the statute. He considered that 'if a workman in the reasonable performance of his duties sustains a physiological injury as the result of the work he is engaged in \* \* \* this is accidental injury in the sense of the statute.' Lord Kinnear observed that the injury was 'not intentional,' and that 'it was unforeseen.' 'It arose,' he said, 'from some causes which are not definitely ascertained,

<sup>11</sup> 89 L. T. 314 (1903) A. C. 443.

except that the appellant was lifting hutches which were too heavy for him. If,' he added, 'such an occurrence as this can not be described in ordinary language as an accident, I do not know how otherwise to describe it.' \* \* \*

"Lord Shand, in the course of a judgment, which was read by Lord Macnaghten, said: 'I shall only add that concurring as I fully do in holding that the word "accident" in the statute is to be taken in its popular and ordinary sense, I think it denotes or includes any unexpected personal injury resulting to the workman in the course of his employment from any unlooked for mishap or occurrence.' "

**§ 398. "Injury" and "Disease without injury"—Disease contracted in the course of employment.**

John Sheeran was an artisan or laborer employed by the United States in the construction of river and harbor work. Immediately prior to becoming incapacitated Mr. Sheeran was employed at St. Marys Falls canal, Sault Ste. Marie, Mich., in cleaning a building, attending to the heating plant, and removing ashes. In the course of his employment, while removing ashes from the furnace room to a pile outside the building, he contracted a severe cold, which resulted in pneumonia, and was incapacitated for duty for a period lasting more than fifteen days. Mr. Sheeran's disability was in no way due to negligence or misconduct on his part. The attorney general called to pass upon his application for compensation held that an artisan or laborer employed by the United States in the construction of river and harbor work, who contracted a severe cold in the course of his employment resulting in pneumonia and which incapacitated him for duty for a period lasting more than fifteen days, is not entitled to compensation under the act of May 30, 1908 (35 Stat. 556).

The word "injury," as used in above statute, is in no

sense suggestive of disease, nor has it ordinarily any such significance.<sup>12</sup>

It is to be noted that this is the first claim squarely presenting the question whether the word "injury," as used in the Federal Compensation Act, is broad enough to include diseases contracted in the course of employment, and directly attributable to conditions of employment, or whether it should be limited to include only such cases of incapacity as may result from some wound or hurt received in the course of employment.

In an early opinion on the subject the attorney general gave a somewhat unrestricted construction of the word "injury." He said: "In other words, the statute quite consistently provides for the cases of injuries in the course of the employment and accidents resulting in death or otherwise. The word 'injury' is employed comprehensively to embrace all the cases of incapacity to continue the work of employment unless the injury is due to the negligence or misconduct of the employé injured—and including all cases where as a result of the employé's occupation he, without any negligence or misconduct, becomes unable to carry on his work, and this condition continues for more than fifteen days. The word 'accident' is employed to denote the happening of some unusual event, producing death or injury which results in incapacity for work, lasting more than fifteen days. That is to say, within the language of the statute an employé may be injured in the course of his employment without having suffered a definite accident."

In the Sheeran case the word was limited. In speaking of the language above quoted, he said: "That opinion, however, was not intended to create the impression that the statute in question covered diseases contracted in the course of employment. The language of the opinion is, perhaps, broader than it should be, in the light of the committee report on the bill above quoted,

<sup>12</sup>Opinion Atty.-Gen. U. S. April 25, 1910.



which indicates that only injuries of an accidental nature were in mind. As, however, the statute is remedial, it should be generously construed, and so construed it might well be held to include injuries of the character there referred to, although, strictly speaking, no definite accident had occurred which gave rise to the injury. The word 'injury,' however, as used in the statute, is in no sense suggestive of disease, nor has it ordinarily any such signification."

**§ 399. "In the course of such employment" defined.** Attorney General Wickersham has rendered an opinion construing the term "Injured in the course of such employment." The question arose in the case of the claim of H. G. Simpson, who was employed as a laborer on the river and harbor work at Lock No. 5 of the Kentucky river, and who was killed August 22, 1911.

The facts of this case are as follows:

"Decedent, who was off duty at that hour, went up on the bin to talk with the man working there about going home on the following Sunday. As he was in the act of leaving the bin a box of gravel was raised for the purpose of being emptied by the man to whom decedent had been talking. Instead of passing on and allowing the man on duty to empty the box, claimant took hold of it for that purpose, and in so doing he fell overboard and was drowned. Said the attorney general: 'The question therefore arises whether the death occurred in the course of the employment, and the answer must be reached from the facts in the case as above stated.'

"Simpson, it appears, was unmarried, and compensation is claimed on account of his dependent parents.

"As I have said in former opinions, the act of May 30, 1908, is remedial and should be generously construed (28 Op. 254, 258) and the 'purpose of the law was not to set in motion an interminable series of technical in-

quiries, such as would puzzle the minds of learned and profound judges.' (27 Op. 346, 354). Under the broadest possible construction of the act, however, I am unable to hold that this case comes within it. Compensation is only authorized when a person employed by the United States as an artisan or laborer on the classes of work specified is injured 'in the course of such employment,' and it is expressly provided 'that no compensation shall be paid under this act where the injury is due to negligence or misconduct of the employé injured.' The provision 'that no compensation shall be paid under this act where the injury is due to negligence or misconduct of the employé injured' forbids such a construction of the statute as will involve the government in liability for injuries resulting from such voluntary and unnecessary acts of persons in its employ. I reach this conclusion independent of the fact that the decision under the English compensation acts, as well as those relating to the common-law liability of the master for injuries to his servant, are also uniformly to the effect that under such circumstances the injury is not to be deemed to have arisen in the course of the workmen's employment, and no liability arises therefor."<sup>14</sup>

<sup>14</sup> Authorities which sustain this construction in the administration of the British Workmen's Compensation Act are cited as follows: *Reed v. Great Western Railway Company*, 99 L. T. 781; *Phillips v. Williams*, 4 Butterworth's Workmen's Comp. Cas. 143; *Ellsworth v. Metheney*, 104 Fed. 119, 121, 44 C. C. A. 484; *Dresser's Employers' Liability*, vol. 1, p. 104; *McDaniel v. Highland Avenue and Belt R. R. Co.*, 90 Ala. 64, 8 So. 41; *Knox v. Pioneer Coal Co.*, 90 Tenn. 546, 18 S. W. 255; *McCue v. National Starch Mfg. Co.*, 142 N. Y. 106, 36 N. E. 809.

## CHAPTER XXV.

### MATTERS COMMON TO THE VARIOUS AMERICAN STATUTES.

- |  |  |
|--|--|
| <b>Sec.</b>  | <b>Sec.</b>  |
| 400. Introduction.   | 415. Compensation for total disability.  |
| 401. Defenses which are abolished where the employer does not accept the provisions of the Compensation Act. | 416. Compensation paid on account of partial disability.                         |
| 402. Various schemes of administration.  | 417. Medical and surgical aid.   |
| 403. The employments covered by the Acts.  | 418. Who are employés.   |
| 404. Who are "employers".  | 419. The manner in which compensation is paid.                                   |
| 405. Liability of principal—Subrogation.   | 420. Commutation of awards and claims.   |
| 406. The employés covered by the acts.   | 421. Serious, or intentional and wilful misconduct—Intoxication and drunkenness. |
| 407. Notice required by employer, employé and state official.  | 422. Election of remedies.   |
| 408. Injuries covered by the several acts.   | 423. Alternative schemes of compensation permitted.                              |
| 409. Report of accident by employer.   | 424. Physical examination.   |
| 410. Notice of injuries by employé.  | 425. Appeals.  |
| 411. Report of accident and injuries.  | 426. Preference of claims for compensation.                                      |
| 412. Compensation provided by the acts in the event of death and funeral expenses.                           | 427. Assignability and transference of rights of compensation under the acts.    |
| 413. Who are dependents.   | 428. Exemption of employers from provisions of act by contracts.                 |
| 414. When compensation begins in case of disability.   | 429. Penalties for refusing to comply with provisions of the acts.               |
|  | 430. Attorney's fees.  |
|  | 431. Expenses of administration of acts.   |

§ 400. Introduction.—In the preceding chapters, the treatment of the subject has been confined to the separate compensation acts. It is the purpose of this

chapter to treat all of these acts as a body and consider matters and constructions common to them all.

**§ 401. Defenses which are abolished where the employer does not accept the provisions of the Compensation Act.**—In California,<sup>1</sup> Nevada,<sup>2</sup> and Washington<sup>3</sup> the defenses of assumed risk and fellow-servant are abolished, and the rule of comparative negligence is substituted for the former defense of contributory negligence. The Illinois<sup>4</sup> and Kansas<sup>5</sup> acts abolish the three defenses of assumed risk, fellow-servant and contributory negligence, but the acts provide that contributory negligence may be considered by the jury in reducing the amount of damages which may be awarded under these acts. In Massachusetts,<sup>6</sup> Michigan,<sup>7</sup> Ohio,<sup>8</sup> New Jersey<sup>9</sup> and Rhode Island,<sup>10</sup> all of the so-called common-law defenses of assumed risk, fellow-servant and contributory negligence are abolished outright. In New Hampshire<sup>11</sup> and New York<sup>12</sup> only the two defenses of assumed risk and fellow-servant are abolished. The Wisconsin Act<sup>13</sup> abolished the defenses of assumed risk

<sup>1</sup> California Acts, § 1; see ante § 263, this volume.

<sup>2</sup> Nevada Act, § 1 (1) and (2); see ante § 290, this volume.

<sup>3</sup> Washington Act, § 1; see ante § 124, this volume.

<sup>4</sup> Illinois Act, § 1 (1), (2) and (3); see ante § 326, this volume.

<sup>5</sup> Kansas Act, § 1 (a) and (b) and § 2; see ante § 292, this volume.

<sup>6</sup> Massachusetts Act, Part I, § 1 (1), (2), (3) and § 2; see ante § 303, this volume.

<sup>7</sup> Michigan Act, Part I, § 1 (a), (b), (c) and § 2; see ante § 355, this volume.

<sup>8</sup> Ohio Act, § 21 (1); see ante § 171, this volume.

<sup>9</sup> New Jersey Act, § I, paragraphs 1, 2, 3, 4 and 5; see ante § 255, this volume.

<sup>10</sup> Rhode Island Act, § 1 (a), (b), (c); §§ 2, 3 and 4; see ante § 367, this volume.

<sup>11</sup> New Hampshire Act, §§ 2 and 3; see ante § 296, this volume.

<sup>12</sup> New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 202.

<sup>13</sup> Wisconsin Act, § 2394 (1) and (2); see ante § 227, this volume.

and the defense of the fellow-servant where four or more persons are employed in a common employment.

§ 402. **Various schemes of administration.**—The administration of the California<sup>14</sup> and Michigan<sup>15</sup> Acts is under the direction of an Industrial Accident Board. The findings of the California board are subject to revision by the Supreme Court and those of the Michigan board as regard questions of law are subject to the review of the Supreme Court. The Illinois<sup>16</sup> Act provides for its administration through the creation of local boards of arbitration, the findings of which are subject to appeal to the courts and to a right of trial by jury at the election of any party in interest. The Kansas<sup>17</sup> Act provides for a scheme of arbitration, subject to court review. The Massachusetts<sup>18</sup> law provides for a scheme of administration by the creation of an Industrial Accident Board, the findings of which are subject to review by the State Supreme Court. The Nevada<sup>19</sup> law provides for the creation of local boards of arbitration. Findings of these boards are subject to the review of the courts which have jurisdiction in the localities where the boards are appointed. The New Hampshire<sup>20</sup> law provides for a limited scheme of administration under the direction of the State Commissioner of Labor, whose rulings and findings are subject to review by the courts. Under the New Jersey<sup>21</sup> Act the entire

<sup>14</sup>California Act, §§ 12, 13, 14, 15 and 16; see ante § 263, this volume.

<sup>15</sup>Michigan Act, Part V; see ante § 355, this volume.

<sup>16</sup>Illinois Act, §§ 9 and 10; see ante § 326, this volume.

<sup>17</sup>Kansas Act, §§ 22-39; see ante § 292, this volume.

<sup>18</sup>Massachusetts Act, Part III; see ante § 303, this volume.

<sup>19</sup>Nevada Act, §§ 8, 9, 10, 11, 12, 13 and 14; see ante § 290, this volume.

<sup>20</sup>New Hampshire Act, §§ 5, 7, 8, 9 and 12; see ante § 296, this volume.

<sup>21</sup>New Jersey Act, § II, paragraphs 15, 16, 17, 18, 19, 20 and 21; see ante, § 255, this volume.

administration of the law is under the supervision of the court of common pleas. The New York<sup>22</sup> Act provides both for a scheme of arbitration and the determination of awards by proceedings in the courts. The Ohio<sup>23</sup> law rests the entire administration of the law in the State Liability Board of Awards of three members. This board is instructed to classify all employments in which five or more workmen or operatives are regularly employed, according to their degree of hazard, and to determine the risks of such classes, based upon the amount of pay-roll and number of employés in each of said classes. The board is further clothed with authority to determine the procedure in connection with the making of awards and the payment and revision of the same not inconsistent with the Act. The Rhode Island<sup>24</sup> law places the administration of the act under the supervision of the Supreme Court. The Washington<sup>25</sup> Act provides for its administration through an Industrial Insurance Commission of three commissioners, which is charged with the entire control of the procedure and manner of determination of compensations provided for in the law. The Wisconsin<sup>26</sup> Act invests not only the administration of the act in an Industrial Commission of three members, the findings of which are subject to the review of the court, but provides that the same commission shall also administer the factory inspection laws of the State.

<sup>22</sup> New York Act, §§ 201, 202a, 203, 205, 208, 210-212 of Laws 1910, ch. 352, Article 14.

<sup>23</sup> Ohio Act, §§ 1, 4-20; see ante § 171, this volume.

<sup>24</sup> Rhode Island Act, Articles III and IV; see ante § 367, this volume.

<sup>25</sup> Washington Act, §§ 21-24, 26; see ante § 124, this volume.

<sup>26</sup> Wisconsin Act, § 2394-13 to § 2394-29; see ante § 227, this volume.

§ 403. The employments covered by the Acts.—The Acts of California,<sup>27</sup> Michigan,<sup>28</sup> New Jersey<sup>29</sup> and Wisconsin<sup>30</sup> cover all employments except those which are casual. The Acts of Illinois,<sup>31</sup> Kansas,<sup>32</sup> Nevada,<sup>33</sup> New Hampshire<sup>34</sup> and Washington<sup>35</sup> cover and enumerate lists of dangerous (or extra hazardous) employments. The Massachusetts<sup>35a</sup> Act covers all employments excepting domestic service and farm labor. The New York<sup>36</sup> Act covers all employments excepting railroad service. The Rhode Island<sup>37</sup> Act covers all employments except domestic service, agriculture, and employments in which five or less workmen are regularly employed. The Ohio<sup>38</sup> law covers all employments in which five or more workmen or operatives are regularly employed.

§ 404. Who are “employers.”—The term “employer” is used in compensation acts in a broader sense than is usually found in earlier statutes. The Rhode Island Workmen’s Compensation Act defines the term as follows: “‘Employer’ includes any person, co-partnership, corporation or voluntary association, and the

<sup>27</sup> California Act, §§ 4 and 6 (1) and (2); see ante § 263, this volume.

<sup>28</sup> Michigan Act, Part I, § 5, paragraphs 1 and 2 and § 7, paragraphs 1 and 2; see ante § 355, this volume.

<sup>29</sup> New Jersey Act, § II, paragraph 9; see ante § 255, this volume.

<sup>30</sup> Wisconsin Act, §§ 2394-5, 1 and 2, and § 2394-7, 1 and 2; see ante § 227, this volume.

<sup>31</sup> Illinois Act, § 2; see ante § 326, this volume.

<sup>32</sup> Kansas Act, § 6; see ante § 292, this volume.

<sup>33</sup> Nevada Act, § 3; see ante § 290, this volume.

<sup>34</sup> New Hampshire Act, § 1; see ante § 296, this volume.

<sup>35</sup> Washington Act, §§ 3 and 4; see ante § 124, this volume.

<sup>35a</sup> Massachusetts Act, Part I, § 2; see ante § 303, this volume.

<sup>36</sup> New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 205.

<sup>37</sup> Rhode Island Act, Article I, §§ 2 and 3; see ante § 367, this volume.

<sup>38</sup> Ohio Act, §§ 20-1 and 21-1; see ante § 171, this volume.

legal representative of a deceased person.”<sup>39</sup> This term is specifically defined in most of the acts, references to which will be found in the foot note.<sup>40</sup>

**§ 405. Liability of principal—Subrogation.**—Contractor to pay compensation to employés of subcontractor.

Under certain circumstances other than the direct employer are charged with the liability of paying the compensations specified in the several acts. For example the Illinois Act provides:

§ 20. Any person, firm or corporation who undertakes to do or contracts with others to do, or have done for him, them or it, any work embraced in section 2 of this act, requiring such dangerous employment of employés in, or about premises where he, they or it, as principal or principals, contract to do such work or any part thereof, and does not require that the compensation provided for in this act shall be insured to the employé or beneficiary by any such person, firm or corporation undertaking to do such work and any such person, firm or corporation who creates or carries into operation any fraudulent scheme, artifice or device to enable him, them or it to execute such work without such person, firm or corporation being responsible to the employé or beneficiaries entitled to such compensation under the pro-

<sup>39</sup> Rhode Island Act, Article V, § 1 (a); see ante § 367, this volume.

<sup>40</sup> California Act, § 4; see ante § 263, this volume. Illinois Act, §§ 2 and 20; see ante § 326, this volume. Kansas Act, § 9 (h); see ante § 292, this volume. New Hampshire Act, Employer is not defined; see ante § 296, this volume. Nevada Act, § 3 (i); see ante § 290, this volume. New Jersey Act, Employer is not defined; see ante, § 255, this volume. New York Act, Employer is defined by exclusion, § 205, N. Y. Laws 1910, ch. 352, Article 14. Massachusetts Act, Part V, § 2; see ante, § 303, this volume. Michigan Act, Part I, § 5; see ante § 355, this volume. Ohio Act, Employer is not specially defined; see ante § 171, this volume. Washington Act, § 3; see ante § 124, this volume. Wisconsin Act, § 2394-5; see ante § 227, this volume.



visions of this act, such person, firm or corporation shall be included in the term "employer" and with the immediate employer shall be jointly and severally liable to pay the compensation herein provided for, and be subject to all the provisions of this act. The provisions of the other acts relating to this subject are found in the foot note.<sup>41</sup>

§ 406. **The employés covered by the acts.**—The California,<sup>42</sup> Massachusetts,<sup>43</sup> Nevada,<sup>44</sup> New Jersey,<sup>45</sup> Ohio,<sup>46</sup> Washington,<sup>47</sup> Michigan<sup>48</sup> and Wisconsin<sup>49</sup> Acts cover all employés engaged in the employments affected by the law. The Illinois<sup>50</sup> Act covers all employés who are exposed to the necessary hazard of the business conducted by their employer. The Kansas<sup>51</sup> Act covers all employés who are engaged regularly in their employers' trade or business. The New Hampshire<sup>52</sup> law covers all employés who are engaged in manual or mechanical labor. The New York<sup>53</sup> Act covers all employés ex-

<sup>41</sup> California Act has no such provision on the subject. Kansas Act, § 4; see ante § 292, this volume. Massachusetts Act, Part III, § 17; see ante § 303, this volume. Michigan Act has no provision on subject; see ante § 355, this volume. Nevada Act, § 10; see ante § 290, this volume. New Hampshire Act has no provision on subject. New Jersey Act, § I, par. 3; see ante § 255, this volume. New York Act contains no such provision. Ohio Act contains no provision on subject. Rhode Island Act contains no provision on subject. Washington Act, § 17; see ante § 124, this volume. Wisconsin Act has no provision on subject.

<sup>42</sup> California Act, § 7; see ante § 263, this volume.

<sup>43</sup> Massachusetts Act, Part V, § 2; see ante § 303, this volume.

<sup>44</sup> Nevada Act, §§ 2 and 3; see ante § 290, this volume.

<sup>45</sup> New Jersey Act, § I, par. 1; see ante § 255, this volume.

<sup>46</sup> Ohio Act, § 20-1, and note; see ante § 171, this volume.

<sup>47</sup> Washington Act, § 3; see ante § 124, this volume.

<sup>48</sup> Michigan Act, Part I, § 7; see ante § 355, this volume.

<sup>49</sup> Wisconsin Act, § 2394-7; see ante § 227, this volume.

<sup>50</sup> Illinois Act, §§ 21 and 22; see ante § 326, this volume.

<sup>51</sup> Kansas Act, §§ 6 and 9 (i); see ante § 292, this volume.

<sup>52</sup> New Hampshire Act, § 1; see ante § 296, this volume.

<sup>53</sup> New York Act, N. Y. Laws 1910, ch. 352, article 14, § 205.

cept those employed by railroads, foreign and domestic. The Rhode Island<sup>41</sup> law covers all employes whose employment is not casual or whose remuneration does not exceed eighteen hundred dollars (\$1,800.00) per annum.

**§ 407. Notice required by employer, employé and state official.**—The formal procedure respecting the notice required to be given by the employer, employes or the state accident boards or industrial commissions charged with the administration of the Washington,<sup>42</sup> Ohio,<sup>43</sup> Wisconsin,<sup>44</sup> California,<sup>45</sup> Massachusetts,<sup>46</sup> and Michigan<sup>47</sup> Acts has been quite fully developed for each of these states and is given in the section on formal procedure of the several chapters devoted to the discussion of these acts.

Under the Rhode Island<sup>48</sup> Act an employer who accepts its provisions files a written statement to that effect with the commissioner of industrial statistics and gives notice thereof to his employes by posting and keeping continuously posted copies of such statement in conspicuous places about the place, where his workmen are employed. In case such an employer wishes to withdraw his election to be bound by the provisions of the act he shall file a written notice to that effect with said commissioner at least sixty days prior to the expiration of the first or any succeeding year following the filing of his original acceptance and shall give again a reasonable notice to his workmen of his withdrawal as above provided.

<sup>41</sup>Rhode Island Act, Art. V, § 1 (b); see ante § 367, this volume.

<sup>42</sup> § 132.

<sup>43</sup> §§ 175, 179, 183, 184.

<sup>44</sup> § 237.

<sup>45</sup> §§ 267, 273.

<sup>46</sup> §§ 312, 314, 315, 316, 318, 319, 322.

<sup>47</sup> Michigan Act, Part I, §§ 6 and 7; Part II, §§ 16-19; see ante § 355, this volume.

<sup>48</sup> Rhode Island Act, Art. I, §§ 5, 6, Art. II, §§ 17-20; see ante § 367, this volume.

An employé of an employer who has perfected his acceptance of the provision of the act shall be held to have waived his right of action at common law to recover damages for personal injuries unless he shall have given his employer notice in writing at the time of his contract of hire that he claimed such right and within ten days thereafter have filed a copy of the same with said commissioner, or if the contract of hire was entered into prior to the election of the employer then such employé to be able to claim said right is required to file said notice with said commissioner within ten days after his employer has notified him of his employer's election.

Such a waiver may be nollied by such an employé by filing a notice in writing with said commissioner within sixty days prior to the expiration of the first or any succeeding year after the said waiver began to run, that he desires his said right of action at common law and within ten days thereafter shall give notice thereof to his employer.

Similar notices are required of a guardian or parent of a minor *sui juris* for the purpose of the act both to preserve the minor's right of action at law and to waive that right after having perfected it. The notice of waiver by such an employé or his parent or guardian, in case he is a minor, shall take effect five days after its delivery to the employer.

To recover compensation on account of an injury to an employé, he must give the employer a notice within thirty days after the happening thereof and must file his claim within one year after the occurrence of the same, or, in case of death, physical or mental incapacity, his legal representatives are required to give the same notice and file their claim within one year after death or after the removal of such physical and mental disability. Such notice shall be in writing, describe the nature, time, place and cause of the injury, and name and address of the injured and shall be signed by him in

person or in case of his death by dependent person or his legal representative. The notice shall be served upon the employer, if the employer is a corporation, upon any officer or agent upon whom process may be served by delivering the same to the person to be served, or by leaving it at his residence or his or its place of business or by sending the same by registered mail addressed to the person or corporation to be served at his or its last known residence or place of business. Such notice shall not be invalidated by reason of inaccuracy in the description of the injury or name and address of the injured unless it was intended to mislead the employer and he was so misled thereby. Want of notice shall not be a bar to such a claim if it be shown that the employer or his agent had knowledge of the injury or that it was due to accident, mistake or unforeseen cause.

Notice of filing of petition must be served on respondent within four days of filing the same.

Within ten days after the filing of the petition the respondent must file his answer and a copy thereof for the petitioner.

The claim for compensation is now ready for hearing and the judgment rendered thereon by the Superior Court is subject to the proceedings provided for review and appeals. Such notices are provided for in the acts of Nevada,<sup>49</sup> Kansas,<sup>50</sup> Illinois,<sup>51</sup> New Hampshire,<sup>52</sup> New Jersey<sup>53</sup> and New York.<sup>54</sup>

<sup>49</sup> Nevada Act, §§ 4 and 7; see ante § 290, this volume.

<sup>50</sup> Kansas Act, §§ 10, 14, 15, 20, 22, 24 (a), 25, 36, 44, 45; see ante § 292, this volume.

<sup>51</sup> Illinois Act, § 1, par. 3-a, b, c, § 14; see ante § 326, this volume.

<sup>52</sup> New Hampshire Act, §§ 3, 4, 5, 7, 9; see ante § 296, this volume.

<sup>53</sup> New Jersey Act, § I, par. 6, § II, pars. 9, 10, 15, 16 and 20; see ante, § 255, this volume.

<sup>54</sup> New York Act, N. Y. Laws, 1910, ch. 352, article 14, §§ 201, 206 and 210.

§ 408. **Injuries covered by the several acts.**—The acts of California<sup>55</sup> and Wisconsin<sup>56</sup> provide for the compensation of all injuries growing out of the employment, unless the injury was the result of the wilful misconduct of the injured employé. The Illinois<sup>57</sup> and Washington<sup>58</sup> Acts provide for the compensation of all injuries growing out of the employment unless the injury resulted from the deliberate intention of the injured employé to cause the injury. The Kansas<sup>59</sup> Act provides for the compensation of all injuries growing out of the employment, unless the injury is caused by the deliberate intention of the injured workman, or his wilful failure to use safety devices provided by law, or on account of his intoxication. The Massachusetts<sup>60</sup> and New York<sup>61</sup> Acts provide for the compensation of all injuries growing out of the employment, unless the injury was due to the serious and wilful misconduct of the injured workman. However, the Massachusetts law further provides that in case the injury was due to the serious and wilful misconduct of the employer, the compensation shall be double. The Michigan<sup>62</sup> law provides for the compensation of all injuries growing out of the employment unless the injury is the result of the intentional and the wilful misconduct of the injured workmen. The New Hampshire<sup>63</sup> law provides for the compensation of all injuries growing out of the employment unless the employé's injury is caused by his intoxication, by his violation of law, or by reason of his serious or wilful misconduct. The act further provides

<sup>55</sup> California Act, § 3 (3) ; see ante § 263, this volume.

<sup>56</sup> Wisconsin Act, § 2394-4, 3 ; see ante § 227, this volume.

<sup>57</sup> Illinois Act, § 8 ; see ante § 326, this volume.

<sup>58</sup> Washington Act, § 6 ; see ante § 124, this volume.

<sup>59</sup> Kansas Act, § 1 (b) ; see ante § 292, this volume.

<sup>60</sup> Massachusetts Act, Part II, §§ 2 and 3 ; see ante § 303, this volume.

<sup>61</sup> New York Act, N. Y. Laws 1910, ch. 352, Art. 14, § 206.

<sup>62</sup> Michigan Act, Part II, §§ 1, 2, 3 ; see ante § 355, this volume.

<sup>63</sup> New Hampshire Act, § 3 ; see ante § 296, this volume.

that, in case the injury was due to the wilful failure of the employer to comply with any statute or order made under authority of law, such employer shall be liable for all injuries at the election of the workman. The New Jersey<sup>64</sup> and Rhode Island<sup>65</sup> Acts provide for the compensation of all injuries growing out of the employment, unless the injury was intentionally self-inflicted by the employé or due to his intoxication. The Nevada<sup>66</sup> law provides for the compensation of all injuries growing out of the employment, excepting cases in which the negligence of the injured employé contributed to the cause of the injury, in which case the benefits are reduced to the extent that the jury may find the negligence of the injured workman contributed to the same. The Ohio<sup>67</sup> law provides for the compensation of all injuries growing out of the employment, unless the injured employé purposely caused the same.

**§ 409. Report of accident by employer.**—The statutes of substantially all of the states require of the employer that he report in writing all accidents occurring in his establishment to the commissioner, board, bureau of labor or a designated state official. The duty to make the report is perhaps most clearly set out by the following provision of the Illinois<sup>68</sup> Act:

It shall also be the duty of every such employer to report between the 15th and the 25th of each month to the Secretary of the State Bureau of Labor Statistics all accidents or injuries for which compensation has been paid under this Act, which accidents or injuries entail a loss to the employé of more than one week's time, and in case the injury results in permanent dis-

<sup>64</sup> New Jersey Act, § I, par. 1; § II, par. 7; see ante § 255, this volume.

<sup>65</sup> Rhode Island Act, Article II, § 2; see ante § 367, this volume.

<sup>66</sup> Nevada Act, § 1; see ante § 290, this volume.

<sup>67</sup> Ohio Act, § 21; see ante § 171 this volume.

<sup>68</sup> Illinois Act, § 19; see ante § 326, this volume.

ability, such report shall be made as soon as it is determined that such permanent disability has resulted or will result from such injury. All such reports shall state the date of injury, including the time of day or night, the nature of the employer's business, the age, sex, conjugal condition of the injured person, the specific occupation of the injured person, the direct cause of the injury and the nature of the accident, the nature of the injury, the length of disability and, in case of death, the length of disability before death, the wages of the injured person, whether compensation has been paid to the injured person, or to his legal representative or his heirs or next of kin, the amount of compensation paid, the amount paid for physicians', surgeons' and hospital bills, and by whom paid, and the amount paid for funeral or burial expenses, if known, the making of reports as provided herein shall release the employer covered by the provisions of this Act from making such reports to any other officer of the State.

In the states where acts do not specifically impose this duty, the boards have construed the duty as implied<sup>69</sup> and have drafted forms for this purpose. In some states the failure to make the report renders the employer liable to a penalty.<sup>70</sup> The citations of the provisions of the other states relating to this subject are found in the foot note.<sup>71</sup>

<sup>69</sup> Kansas Act, § 16; see ante § 292, this volume. Wisconsin Act, § 2394-14; see ante § 227, this volume.

<sup>70</sup> California Laws, ch. 53, 1911, § 7; see ante § 263, this volume. Massachusetts Act, Part III, § 18; see ante §§ 304, this volume. Michigan Act, Part III, § 17; see ante § 355, this volume. New Hampshire Act, § 12; see ante § 296, this volume. Ohio Laws, ante § 173, chapter XI. Washington Act, § 14, note by commission; see ante § 124, this volume.

<sup>71</sup> California Laws, ch. 53, 1911, §§ 1-6 and 8; see ante § 263, this volume. Kansas Act, § 16; see ante § 292, this volume. Massachusetts Act, Part III, § 18; see ante § 304, this volume. Michigan Act, Part III, § 17; see ante § 355, this volume. New Hampshire Act, § 12, see ante § 296, this volume. New Jersey Laws, see

**§ 410. Notice of injuries by employé.**—The acts of all the states require an injured employé, or some one on his behalf, or on behalf of his dependents in case he is killed, to give notice of the injury to his employer to establish such employé's right to recovery of compensation. The contents of such notice are clearly set forth in the Michigan<sup>72</sup> Act in the following language:

No proceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury shall have been given to the employer three months after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employé, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury; and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his dependents or by a person in their behalf.

The notice shall be served upon the employer or an agent thereof. Such service may be made by delivering said notice to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mis-

ante § 257, par. 2, and New Jersey Laws, 1912, chapter 156. New York Act, ch. 352; Laws 1910, article 14, § 212. Ohio Act, § 9; see ante, §§ 171 and 173 (section 1). Washington Act, § 14; see ante § 124, this volume. Wisconsin Act, § 2394-14; see ante, § 227, this volume; Rule II, § 242, form (e).

<sup>72</sup> Michigan Act, Part II, §§ 15-18; see ante § 355, this volume.



lead, and the employer, or the insurance company carrying such risk, or the commissioner of insurance, as the case may be, was in fact misled thereby. Want of such written notice shall not be a bar to proceedings under this act, if it be shown that the employer had notice or knowledge of the injury.

The citations of the provisions of the other acts are given in the foot note.<sup>73</sup> The forms of the procedure on this subject will be found at the close of the respective chapters on these acts. (Chapters X to XXII).

**§ 411. Report of accident and injuries.**—The Acts of Nevada and Rhode Island contain no provisions relating to this subject. The acts of the other eleven states vary in degree of comprehensiveness of regulation of the reports of accidents and injuries from the mere requirement of reporting the name and amounts paid an injured employé under an agreement or after court proceedings under the compensation plan of New York<sup>74</sup> to the elaborate schemes provided under the California<sup>75</sup> (special statute), Ohio,<sup>76</sup> Washington,<sup>77</sup> and Wisconsin<sup>78</sup> Acts.

<sup>73</sup> California Act, § 10; see ante § 263, this volume. Illinois Act, § 14; see ante § 326, this volume. Kansas Act, § 22; see ante § 292, this volume. Massachusetts Act, Part II, §§ 15, 16, 17, 18 and 23; see ante, § 303, this volume. Nevada Act, § 4; see ante § 290, this volume. New Hampshire Act, § 5; see ante § 296, this volume. New Jersey Act, § 11, 15; see ante § 255, this volume. New York Act, Laws 1910, ch. 352, article 14, § 206. Ohio Act, §§ 8 and 16; see ante § 171 and § 174, Rules 4 and 5, this volume. Rhode Island Act, Article II, §§ 17, 18, 19, 20; see ante § 367, this volume. Washington Act, § 12 (a) (b) (c) (d); see ante § 124, this volume. Wisconsin Act, § 2394-II; see ante § 227, this volume.

<sup>74</sup> New York Act, N. Y. Laws 1910, ch. 352, Art. 14, § 212.

<sup>75</sup> California, chapter 53, Laws 1911, §§ 1-8; see ante § 263, this volume.

<sup>76</sup> Ohio Act, §§ 9, 10 and 39; and text, ante § 173, § 1; see ante § 171, this volume. Rhode Island Act contains no provision on the subject.

<sup>77</sup> Washington Act, § 14, pars. 1, 2, 3; see ante § 124, this volume.

<sup>78</sup> Wisconsin Act, Text, chapter XII, forms (e) and (f), and (j); see ante § 227, this volume.

The provisions of the Washington Act are given in general as a type of the requirements in this respect which reads as follows:

Sec. 14. Notice of accident.—Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

1. The time, cause and nature of the accident and injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

**Note by board.**—"Every person who, after due notice, shall refuse or neglect to make or furnish any statement, report or information lawfully required of him by any public officer, or who, in such statement, report or information shall make any wilfully untrue, misleading or exaggerated statement, or who shall wilfully hinder, delay or obstruct any public officer in the discharge of his official powers or duties, shall be guilty of a misdemeanor." Rem. and Bal. Code, Sec. 2672; Sec. 420, Chap. 249, Laws 1909.

Reference to the provisions of the acts of the other six states are given in the foot note.<sup>79</sup>

For forms of such reports see "Formal Procedure" at the close of the several chapters on the respective acts.

**§ 412. Compensations provided by the acts in the event of death and funeral expenses.**—The California<sup>80</sup> Act provides, in the event of death of an employé leaving

<sup>79</sup> Illinois Act, § 19; see ante § 326, this volume. Kansas Act, § 16; see ante § 292, this volume. Massachusetts Act, Part III, § 18; see ante § 303, this volume. Michigan Act, Part III, § 17; see ante § 355, this volume. Nevada Act is silent on the subject; see ante § 290, this volume. New Hampshire Act, § 12; see ante § 296, this volume. New Jersey; see ante § 257, par. 2, this volume.

<sup>80</sup> California Act, § 8 (3), (a) (b) (c); see ante § 263, this volume.

dependents, that the compensation shall be three years' average earnings, with a minimum of one thousand dollars (\$1000.00) and a maximum of five thousand dollars (\$5000.00). In case the decedent leaves no dependents, the act provides for the payment of the reasonable expenses of his burial not to exceed one hundred dollars (\$100.00). The law further provides that the Industrial Board, at its discretion, may order payment of the compensation in a lump sum or in weekly payments, and where the decedent leaves persons partially dependent upon his earnings they shall be paid such a percentage of three times the average annual earnings of the decedent as the annual amount received by such dependents from the decedent bears to such average earnings. The board may revise payments from time to time as equity may require. The Illinois<sup>81</sup> Act, in the event of death of a workman leaving dependents, provides that the compensation shall be four years' average annual earnings, with a minimum of fifteen hundred dollars (\$1500.00) and a maximum of thirty-five hundred dollars (\$3500.00). In case the decedent does not leave dependents, there may be awarded a sum not to exceed one hundred fifty dollars (\$150.00) for burial expenses. The Kansas<sup>82</sup> Act provides, in the event of death of an employé leaving dependents that the compensation shall be three years' earnings, with a minimum of twelve hundred dollars (\$1200.00) and a maximum of thirty-six hundred dollars (\$3600.00). If the decedent does not leave dependents, then the reasonable expense of his medical attendance and burial not to exceed one hundred dollars (\$100.00) may be awarded. The Massachusetts,<sup>83</sup> Michigan<sup>84</sup> and

<sup>81</sup> Illinois Act, § 4 entire; see ante § 326, this volume.

<sup>82</sup> Kansas Act, § 11, 12, 13, 14; see ante § 292, this volume.

<sup>83</sup> Massachusetts Act, Part II, §§ 1 to 8 inclusive; see ante § 304, this volume.

<sup>84</sup> Michigan Act, Part II, §§ 1 to 8 inclusive; see ante § 355, this volume.

Rhode Island<sup>85</sup> Acts provide that in the event of death of a workman leaving dependents the compensation shall be fifty per cent. (50%) of the weekly wages for three hundred (300) weeks, with a minimum of four dollars (\$4.00) and a maximum of ten dollars (\$10.00) a week. The provision for the payment of compensation to persons partially dependent upon the decedent is the same as that in the California Act. In case the decedent does not leave dependents, then these Acts provide that reasonable expenses of last sickness and burial not exceeding two hundred dollars (\$200.00) be awarded. The New Hampshire<sup>86</sup> Act provides that in the event of death of a workman leaving dependents the compensation shall be one hundred fifty (150) times the average weekly earnings, which in no case shall be more than three thousand dollars (\$3000.00). The provisions for compensating persons partially dependent is the same as in the California Act. In case the decedent does not leave dependents, the reasonable expenses of his medical attendance and burial not to exceed one hundred dollars (\$100.00) shall be paid. The New Jersey<sup>87</sup> Act provides that in the event of the death of a workman leaving dependents the compensation shall be from twenty-five (25) to sixty (60) per cent. of the weekly earnings for three hundred (300) weeks, with a minimum of five dollars (\$5.00) and a maximum of ten dollars (\$10.00) per week; and in case the decedent does not leave dependents, funeral expenses not to exceed two hundred dollars (\$200.00) shall be paid. The New York<sup>88</sup> Act provides that in the event of death of a workman leaving dependents that the compensation shall be twelve

<sup>85</sup> Rhode Island Act, Article II, §§ 1 to 9 inclusive; see ante § 367, this volume.

<sup>86</sup> New Hampshire Act, § 6 (1); see ante § 296, this volume.

<sup>87</sup> New Jersey Act, § II, pars. 7 to 9 and 12 to 16; see ante § 255, this volume.

<sup>88</sup> New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 207, par. 1.

hundred (1200) times decedent's daily earnings, not exceeding three thousand dollars (\$3000.00), (for the compensation of persons partially dependent, see California Act above;) and in case the decedent leaves no dependents, reasonable expenses of his medical attendance and burial not to exceed one hundred dollars shall be awarded. The Nevada<sup>89</sup> Act provides that in the event of death of a workman leaving dependents, that the compensation shall be three years' earnings, with a minimum of two thousand dollars (\$2000.00) and a maximum of three thousand dollars (\$3000.00) total compensation; persons partially dependent receive fifty per cent. (50%) of what persons wholly dependent receive; and if the decedent does not leave dependents, reasonable expenses of his medical attendance and burial not to exceed three hundred dollars (\$300.00) shall be awarded. The Ohio<sup>90</sup> Act provides, in the event of the death of a workman leaving dependents the compensation shall be sixty-six and two-thirds per cent. (66 2-3%) of his average weekly wage, to continue from the date of death for six (6) years, with a minimum of fifteen hundred dollars (\$1,500.00) and a maximum of three thousand four hundred dollars (\$3400.00), total compensation, and funeral expenses not to exceed one hundred fifty dollars (\$150.00). In case the decedent leaves no dependent, the board may award reasonable funeral expenses not to exceed one hundred fifty dollars (\$150.00) and such amount for medical, nurse and hospital services and medicines as it thinks proper not to exceed two hundred dollars (\$200.00). The Washington<sup>91</sup> Act provides that in the event of death of an employé leaving dependents that the compensation shall be twenty dollars (\$20.00) per month for the surviving

<sup>89</sup> Nevada Act, § 5; see ante, § 290, this volume.

<sup>90</sup> Ohio Act, §§ 23, 24, 25, 28, 29 and 30; see ante § 171, this volume.

<sup>91</sup> Washington Act, § 5 (a), (c), (e); see ante § 124, this volume.

spouse while single, and five dollars (\$5.00) per month for each child under sixteen (16), with a maximum monthly payment of thirty-five dollars (\$35.00) and with a maximum of four thousand dollars (\$4,000.00) total compensation. In case the decedent does not leave dependents, burial expense may be allowed not to exceed seventy-five dollars (\$75.00). The dependents are classified and the compensation paid them is specifically stated. The Industrial Accident Commission is clothed with authority to commute and revise compensations awarded. The Wisconsin<sup>92</sup> law provides that in the event of the death of a workman leaving dependents, the compensation shall be four (4) years' earnings, with a minimum of fifteen hundred dollars (\$1,500.00) and a maximum of three thousand dollars (\$3,000.00) total compensation. If the decedent does not leave dependents, funeral expenses may be allowed not to exceed one hundred dollars (\$100.00). The Industrial commission may commute the compensation by lump sum payments.

**§ 413. Who are dependents.**—Provision is universally made in all of the compensation acts to provide compensation for persons who wholly or in part depend upon an employé who is killed in the due course of employment. The Wisconsin<sup>93</sup> Act defines dependents thus:

“The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employé:

“(a) A wife upon a husband with whom she is living at the time of his death.

“(b) A husband upon a wife with whom he is living at the time of her death.

“(c) A child or children under the age of eighteen

<sup>92</sup> Wisconsin Act, § 2394-9, pars. 1, 2 and 3; see ante § 227, this volume.

<sup>93</sup> § 2394, 3 (a), (b), (c) and (4); see ante § 237, this volume.

years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of the parent, there being no surviving dependent parent.

"In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employé; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof; and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

"No person shall be considered a dependent unless a member of the family of the deceased employé, or bears to him the relation of husband or widow, or lineal descendant, or ancestor, or brother, or sister."

The definition of who are dependents given in the other statutes are similar with slight limitation.<sup>94</sup>

**§ 414. When compensation begins in case of disability.**—Under the several acts, compensation begins as follows: Under the California,<sup>95</sup> Illinois,<sup>96</sup> Ohio<sup>97</sup> and Wisconsin<sup>98</sup> Acts, after the first week; under the

<sup>94</sup> California Act, § 9 (3); see ante § 263, this volume. Illinois Act, § 4, a, b; see ante § 326, this volume. Kansas Act, § 11 (1), (2), (3); see ante § 292, this volume. Massachusetts Act, Part II, § 7; see ante § 304, this volume. Michigan Act, Part II, §§ 6 and 7; see ante § 355, this volume; New Hampshire Act, § 6 (1); see ante § 296, this volume. New Jersey Act, § II, par. 12 (1); see ante § 255, this volume. Nevada Act, § 5 (a) and (b); see ante § 290, this volume. New York Act, N. Y. Laws 1910, ch. 352, Art. 14, § 207 (a) and (b). Ohio Act, § 28, pars. 2, 3, and § 29; see ante § 171, this volume. Rhode Island Act, Article II, §§ 7-8; see ante § 367, this volume. Washington Act, § 5 (a), (1), (2), (3), (4), (b), (2) and (3), (c) and (i); see ante § 124, this volume.

<sup>95</sup> California Act, § 8, (2) (d); see ante § 263, this volume.

<sup>96</sup> Illinois Act, § 5, (b); see ante § 326, this volume.

<sup>97</sup> Ohio Act, § 25; see ante § 171, this volume.

<sup>98</sup> Wisconsin Act, § 2394-9, par. 2; see ante § 227, this volume.

Kansas,<sup>99</sup> Massachusetts,<sup>1</sup> Michigan,<sup>2</sup> New Hampshire,<sup>3</sup> New York,<sup>4</sup> New Jersey<sup>5</sup> and Rhode Island<sup>6</sup> Acts, after two weeks; under the Washington<sup>7</sup> Act, from the time the injury occurred; under the Nevada<sup>8</sup> Act, ten (10) days after the injury was received.

**§ 415. Compensation for total disability.**—The acts of the several states respectively provide that in case an employé is totally disabled, the compensation shall be as follows: Under the California<sup>9</sup> Act it shall be sixty-five per cent. (65%) of the employé's average weekly wages during such disability for not more than fifteen (15) years, and that the total shall not exceed three (3) years' earnings, with a minimum of three hundred and thirty-three dollars and thirty-three cents (\$333.33) and a maximum of one thousand six hundred and sixty-six dollars and sixty-six cents (\$1,666.66) per annum; under the Illinois<sup>10</sup> Act the compensation shall be fifty per cent. (50%) of the employé's weekly earnings for eight (8) years, figured on a minimum of five dollars (\$5.00) and a maximum of twelve dollars (\$12.00) per week, and the total compensation shall not exceed thirty-five hundred dollars (\$3,500.00). However, if complete disability continues, then the compensation shall continue during life equal to eight per cent. (8%) of the death benefit, which in any event shall not be less than ten dollars (\$10.00) per month; under the Kansas<sup>11</sup> Act the compensation shall be fifty per cent. (50%)

<sup>99</sup> Kansas Act, § 1, (a); see ante § 292, this volume.

<sup>1</sup> Massachusetts Act, Part II, § 4; see ante § 304, this volume.

<sup>2</sup> Michigan Act, Part II, § 3; see ante § 355, this volume.

<sup>3</sup> New Hampshire Act, § 3; see ante § 296, this volume.

<sup>4</sup> New York Act, N. Y. Laws 1910, ch. 352, Art. 14, § 206.

<sup>5</sup> New Jersey Act, § II, par. 13; see ante § 255, this volume.

<sup>6</sup> Rhode Island Act, Article II, § 2; see ante § 367, this volume.

<sup>7</sup> Washington Act, § 5; see ante § 124, this volume.

<sup>8</sup> Nevada Act, § 1; see ante § 290, this volume.

<sup>9</sup> California Act, § 8 (a); see ante § 263, this volume.

<sup>10</sup> Illinois Act, § 5, a, c and e; see ante § 326, this volume.

<sup>11</sup> Kansas Act, § 11 (b); see ante § 292, this volume.



of the injured workman's average weekly earnings, with a minimum of six dollars (\$6.00) and a maximum of fifteen dollars (\$15.00) per week, and that the compensation shall begin two (2) weeks after the accident and in no event continue for more than ten (10) years; under the Massachusetts<sup>12</sup> Act the compensation shall be fifty per cent. (50%) of the injured workman's weekly loss of wages, with a minimum of four dollars (\$4.00) and a maximum of ten dollars (\$10.00) per week, which in no event shall continue for more than five hundred (500) weeks, and shall in no case exceed a total compensation of three thousand dollars (\$3,000.00). It is further provided under this act that certain specified injuries shall be paid fixed rates. Under the Michigan<sup>13</sup> Act the compensation shall be fifty per cent. (50%) of the injured workman's average weekly wages, with a minimum of four dollars (\$4.00) and a maximum of ten dollars (\$10.00) per week, which in no event shall continue for more than five hundred (500) weeks and shall in no case exceed a total compensation of four thousand dollars (\$4,000.00). This act further provides that specified injuries shall be paid fixed rates. Under the New Hampshire<sup>14</sup> Act the injured employé shall be paid fifty per cent. (50%) of his average weekly earnings so long as total disability continues, with a maximum of ten dollars (\$10.00) per week, and that the compensation shall not continue for more than three hundred (300) weeks from the date of the accident. Under the New Jersey<sup>15</sup> Act the injured employé shall be paid fifty per cent. (50%) of his wages for four hundred (400) weeks, based on a minimum of five dollars (\$5.00) and a maximum of ten dollars

<sup>12</sup> Massachusetts Act, § 9 and § 11 (a) to (d); see ante § 304, this volume.

<sup>13</sup> Michigan Act, Part II, § 9; see ante § 355, this volume.

<sup>14</sup> New Hampshire Act, § 6 (2); see ante § 296, this volume.

<sup>15</sup> New Jersey Act, § II, par. 11 (b); see ante § 255, this volume.

(\$10.00) per week. Provided that if the employé's wages were less than five dollars (\$5.00) per week at the time he was injured, then he shall be paid his full wages. The act further provides that specified injuries shall be paid fixed rates. Under the Nevada<sup>16</sup> Act the compensation paid such an injured employé shall be sixty per cent. (60%) of his average weekly earnings, but in no event shall the total of all payments exceed three thousand dollars (\$3,000.00). Under the New York<sup>17</sup> Act the compensation paid such an injured employé shall be fifty per cent. (50%) of his average weekly earnings, in no case to exceed ten dollars (\$10.00) per week, and shall not continue longer than eight (8) years from the date of the accident. Under the Ohio<sup>18</sup> Act the compensation that shall be paid to an employé permanently and totally disabled shall be sixty-six and two-thirds per cent. (66 2-3%) of his average weekly wage and shall continue until the death of such person, with a minimum of five dollars (\$5.00) and a maximum of twelve dollars (\$12.00) per week, but if the employé's wages were less than five dollars (\$5.00) per week, then he shall receive his full wages. In case the employé's total disability is temporary, then his compensation shall be sixty-six and two-thirds per cent. (66 2-3%) of his average weekly wages, with a minimum of five dollars (\$5.00) per week and a maximum of twelve dollars (\$12.00), the same to continue for not to exceed six (6) years, and the total compensation in no case to exceed three thousand four hundred dollars (\$3,400.00), on account of the same injury. Under the Rhode Island<sup>19</sup> Act it is provided that the compensation paid to an injured employé shall be fifty per cent. (50%) of his average weekly wages, with

<sup>16</sup> Nevada Act, § 6 (a) and (b); see ante § 290, this volume.

<sup>17</sup> New York Act, N. Y. Laws 1910, Article 14, ch. 352, § 207, 2.

<sup>18</sup> Ohio Act, § 27; see ante § 171, this volume.

<sup>19</sup> Rhode Island Act, Article II, § 10 and § 12; see ante § 367, this volume.

a minimum of four dollars (\$4.00) and a maximum of ten dollars (\$10.00) per week, and that the same shall continue for not more than five hundred (500) weeks. It is further provided that specified injuries shall be paid fixed rates. Under the Washington<sup>20</sup> Act it is provided that the compensation paid an injured employé shall be twenty dollars (\$20.00) per month, if single, and twenty-five dollars (\$25.00) per month, if married, and for each child under sixteen (16) years of age there shall be paid five dollars (\$5.00) per month, and that the total compensation per month shall not exceed thirty-five dollars (\$35.00), or sixty per cent (60%) of the monthly wage, and that the total compensation shall not exceed four thousand dollars (\$4,000.00). If the injury was caused by the removal of a safeguard by the injured employé, the compensation shall be reduced ten per cent. (10%). Under the Wisconsin<sup>21</sup> Act the compensation paid an injured employé shall be sixty-five per cent. (65%) of his earnings, figured on a minimum of three hundred and seventy-five dollars (\$375.00) and a maximum of seven hundred and fifty dollars (\$750.00) annually, and that the compensation shall not continue to exceed four years' earnings. If the totally disabled employé requires a nurse, the compensation shall, ninety (90) days after such nurse became necessary, be increased to one hundred per cent. (100%) of the average weekly earnings.

**§ 416. Compensation paid on account of partial disability.**—The acts of the several states provide that the compensation in case of partial disability of an injured employé shall be paid during such disability and shall be, respectively, as follows: Under the California<sup>22</sup> Act

<sup>20</sup> Washington Act, § 5 (b), (c), (d) and (e); see ante § 124, this volume.

<sup>21</sup> Wisconsin Act, § 2394-9, par. 2 (a), (c), (d); see ante § 227, this volume.

<sup>22</sup> California Act, § 8 (1), (2), (b) and (c); see ante § 263, this volume.

the compensation paid shall be sixty-five per cent. (65%) of the loss of wages of the injured employé, and that the wages considered and the amount of the total payment shall have the same limits as in the cases for total disability; under the Illinois<sup>23</sup> Act the compensation shall be fifty per cent. (50%) of the injured employé's loss of weekly wages, with a minimum of five dollars (\$5.00) and a maximum of twelve dollars (\$12.00) per week, and that the compensation shall not continue for more than eight (8) years; additional compensations are provided for disfigurement; under the Kansas<sup>24</sup> Act the compensation paid shall be from twenty-five (25) to fifty (50) per cent. of the injured employé's average weekly earnings, with a minimum of three dollars (\$3.00) and a maximum of twelve dollars (\$12.00) per week, and that the same shall not continue for more than ten (10) years. If the age of the employé was less than twenty-one (21) years of age and his wages less than ten dollars (\$10.00) per week when injured, his compensation shall not be less than seventy-five per cent. (75%) of his average weekly earnings; under the acts of Massachusetts<sup>25</sup> and Rhode Island<sup>26</sup> the compensation shall be fifty per cent. (50%) of the injured employé's loss of weekly wages, with a maximum of ten dollars (\$10.00) per week, and that the same shall not continue for more than three hundred (300) weeks. These laws further provide that fixed rates of compensation shall be paid for specified injuries; under the Michigan<sup>27</sup> Act the compensation paid shall be one-half ( $\frac{1}{2}$ ) of the difference between the injured employé's weekly wage at the time of the injury and after the in-

<sup>23</sup> Illinois Act, § 5, a, b, c and d; see ante § 326, this volume.

<sup>24</sup> Kansas Act, § 11 (c) and § 12; see ante § 292, this volume.

<sup>25</sup> Massachusetts Act, Part II, § 5 and §§ 10 and 11 (a) to (d); see ante § 303, this volume.

<sup>26</sup> Rhode Island Act, Article II, §§ 11 and 12; see ante § 367, this volume.

<sup>27</sup> Michigan Act, Part II, §§ 4 and 10; see ante § 355, this volume.

jury, and that the same shall not exceed ten dollars (\$10.00) per week or continue to exceed three hundred (300) weeks. The act further provides fixed rates of compensation for specified injuries; under the New Hampshire<sup>28</sup> Act the compensation paid shall be fifty per cent. (50%) of the injured employé's loss of weekly wages, with a maximum of ten dollars (\$10.00) per week, and that the same shall not continue to exceed three hundred (300) weeks; under the New Jersey<sup>29</sup> Act the compensations are paid according to fixed schedules for definable injuries, and for other injuries a relative proportion to the fixed schedules; under the New York<sup>30</sup> Act the compensation shall be fifty per cent. (50%) of the injured employé's loss of wages and that the same shall not exceed ten dollars (\$10.00) per week and shall not continue longer than eight (8) years; under the Nevada<sup>31</sup> Act the compensation paid shall be such proportion of sixty per cent. (60%) of the injured employé's earnings as his loss of capacity bears to his total disability, and in no event shall the total payment exceed three thousand dollars (\$3,000.00). It is further provided that maiming shall be compensated as in cases of total disability. Under the Ohio<sup>32</sup> Act the compensation paid shall be sixty-six and two-thirds per cent. (66 2-3%) of the injured employé's impairment of his average weekly wages during the continuance thereof, not to exceed six (6) years, with a minimum of five dollars (\$5.00) per week and a maximum of twelve dollars (\$12.00) per week, and that the total compensation on account of any such injury shall not exceed thirty-four hundred dollars (\$3,400.00). Under the Washington<sup>33</sup>

<sup>28</sup> New Hampshire Act, § 6 (2); see ante § 296, this volume.

<sup>29</sup> New Jersey Act, § II, par. 11, (a) and (c); see ante § 255, this volume.

<sup>30</sup> New York Act, § 207, 2, Laws 1910, ch. 352, Article 14.

<sup>31</sup> Nevada Act, § 6, (a) and (b); see ante § 290, this volume.

<sup>32</sup> Ohio Act, §§ 23 and 26; see ante § 171, this volume.

<sup>33</sup> Washington Act, § 5 (f), (g), (h); see ante § 124, this volume.

Act the compensation shall be paid in a lump sum, in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of fifteen hundred dollars (\$1,500.00); under the Wisconsin<sup>34</sup> Act the compensation paid shall be sixty-five per cent (65%) of the injured employé's loss of annual wages and that the total compensation shall not exceed four years' wages, nor three thousand dollars (\$3,000.00), nor shall extend beyond fifteen (15) years.

**§ 417. Medical and surgical aid.**—Under the acts of the several states it is provided that expenses paid on account of medical and surgical aid shall be respectively as follows: Under the California<sup>35</sup> Act such expenses, reasonable in amount, shall be paid during the first ninety (90) days and that the total sum thus paid shall not exceed one hundred dollars (\$100.00); under the Illinois<sup>36</sup> Act the necessary medical, surgical and hospital services on account of an injured employé shall be paid for a period of eight (8) weeks, and that the total sum thus paid shall not exceed two hundred dollars (\$200.00). It is further separately provided that the expenses of necessary services of physician and surgeon for a period of eight (8) weeks shall be paid, without limitations on the amount. Under the acts of Kansas,<sup>37</sup> New Hampshire,<sup>38</sup> Nevada,<sup>39</sup> New York,<sup>40</sup> no provision is made for such expenses unless the employé dies, leaving no dependents. Under the New Jersey<sup>41</sup> Act such expenses are provided during the first two (2)

<sup>34</sup> Wisconsin Act, § 2394-9, 1 and 2, (b) and (c) and (d); see ante § 367, this volume.

<sup>35</sup> California Act, § 8 (1); see ante § 263, this volume.

<sup>36</sup> Illinois Act, § 5, a; see ante § 326, this volume.

<sup>37</sup> Kansas Act, § 11 (a), (3); see ante § 292, this volume.

<sup>38</sup> New Hampshire Act, § 6 (1), (c); see ante § 296, this volume.

<sup>39</sup> Nevada Act, § 5 (c); see ante § 290, this volume.

<sup>40</sup> New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 207 (c).

<sup>41</sup> New Jersey Act, § II, par. 14; see ante § 255, this volume.

weeks and that the total sum thus paid shall not exceed one hundred dollars (\$100.00); under the Massachusetts<sup>42</sup> and Rhode Island<sup>43</sup> Acts, during the first two (2) weeks the expenses of reasonable medical and hospital service and medicines, when needed, shall be paid; in Rhode Island, in case one employer and employé disagree as to the amount, it shall be fixed by the superior court; under the Michigan<sup>44</sup> Act there is a provision for the reasonable medical, hospital service and medicines during the first three weeks; under the Ohio<sup>45</sup> Act a provision is made for such expenses as the State Liability Board of Awards may deem proper and that the total sum of such expenses shall not exceed two hundred dollars (\$200.00); under the Washington<sup>46</sup> Act no provision is made for such expenses; under the Wisconsin<sup>47</sup> Act there shall be paid such expenses as the Industrial Commission may regard as reasonable and to continue during the first ninety (90) days, and that the sum shall include medicines, appliances and hospital expenses.

**§ 418. Who are employés.**—The term “employé” is comprehensively defined in these words by the Massachusetts Statutes<sup>48</sup>. “Employé shall include every person in the service of another under any contract of hire, express or implied, oral or written, except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer. Any reference to an employé who has been injured, shall, when the employé is dead, also include his legal representative, dependent and other persons to

<sup>42</sup> Massachusetts Act, Part II, § 5; see ante § 303, this volume.

<sup>43</sup> Rhode Island Act, Article II, § 5; see ante § 367, this volume.

<sup>44</sup> Michigan Act, Part II, § 4; see ante § 355, this volume.

<sup>45</sup> Ohio Act, § 23; see ante § 171, this volume.

<sup>46</sup> Washington Act, § 5 (a); see ante 124, this volume.

<sup>47</sup> Wisconsin Act, § 2394-9, 1; see ante § 227, this volume.

<sup>48</sup> Massachusetts Act, Part V, § 1; see ante § 303, this volume.

whom compensation is made." The term is expressly defined in many of the statutes, references to which may be found in the foot notes.<sup>49</sup>

§ 419. The manner in which compensation is paid.—The acts of California,<sup>50</sup> Illinois,<sup>51</sup> Kansas,<sup>52</sup> Nevada,<sup>53</sup> New Hampshire,<sup>54</sup> New York,<sup>55</sup> New Jersey,<sup>56</sup> Rhode Island<sup>57</sup> and Wisconsin,<sup>58</sup> provide that the compensation be paid direct by the employer. The Washington Act<sup>59</sup> provides that the compensation be paid from a state insurance fund, created by contributions from the employers covered by the act. The acts of Massachusetts<sup>60</sup> and Michigan<sup>61</sup> provide that the compensation be paid by the employer through optional plans of insurance. The Ohio<sup>62</sup> Act provides that the compensation be paid from a state insurance

<sup>49</sup> California Act, § 6; see ante § 263, this volume. Illinois Act, § 21; see ante § 326, this volume. Kansas Act, § 9 (1); see ante § 292, this volume. New Hampshire Act, employé not defined. Nevada Act, § 2; see ante § 290, this volume; New Jersey Act, employé is not defined. New York Act, employé is not defined. Michigan Act, Part I, § 7; see ante § 355, this volume. Ohio Act, employé is not defined. Rhode Island Act, Article V, § 1 (b); see ante § 367, this volume. Washington Act, § 3; see ante § 124, this volume.

<sup>50</sup> California Act, §§ 1, 2 and 3; see ante § 263, this volume.

<sup>51</sup> Illinois Act, §§ 1, 2 and 3; see ante § 326, this volume.

<sup>52</sup> Kansas Act, §§ 1, 2, 3 and 4; see ante § 292, this volume.

<sup>53</sup> Nevada Act, §§ 1, 2 and 3; see ante § 290, this volume.

<sup>54</sup> New Hampshire Act, §§ 1, 2, 3 and 4; see ante § 296, this volume.

<sup>55</sup> New York Act, N. Y. Laws 1910, ch. 352, Article 14, §§ 200 and 206.

<sup>56</sup> New Jersey Act, §§ I and II, pars. 7, 8, 9 and 10; see ante § 255, this volume.

<sup>57</sup> Rhode Island Act, Article I and Article II, § 1; see ante, § 367, this volume.

<sup>58</sup> Wisconsin Act, §§ 2394-4; see ante § 227, this volume.

<sup>59</sup> Washington Act, §§ 1 and 4; see ante § 124, this volume.

<sup>60</sup> Massachusetts Act, Parts I and II; see ante § 304, this volume.

<sup>61</sup> Michigan Act, Part IV, §§ 1, 2, 3 and 4; see ante § 355, this volume.

<sup>62</sup> Ohio Act, §§ 20-1 and 21-1; see ante § 171, this volume.



fund, created by contributions both by the employers and employés, the employers contributing one hundred per cent. (100%) of the fund and are authorized to deduct ten per cent. (10%) of their premiums from the pay-roll of their employés, the state paying the entire cost of administration.

**§ 420. Commutation of awards and claims.**—All of the commutation acts, excepting Nevada, provide for the commutation of claims and awards. The procedure in this respect provides that the commissions, boards of awards, boards of arbitration, agreement of the parties, and courts shall commute any sums ordered paid by them according to the equities and circumstances of the parties in interest. The provision of the Ohio<sup>63</sup> Act which authorizes commutation of awards is the following:

Sec. 34. The board, under special circumstances, and when the same is deemed advisable, may commute periodical benefits to one or more lump sum payments.

**Note by the Board.**—The power here given to the Board will, as a matter of policy, be seldom exercised, as in practically all cases, it is better for the beneficiaries to receive the award to which they are entitled in installments at stated intervals, rather than in a lump sum. The reasons for this are obvious.

The plans of the other acts are cited in the foot note.<sup>64</sup>

<sup>63</sup> Ohio Act, § 34; see ante § 171, this volume. Rhode Island Act, Article II, § 25; see ante § 367, this volume. Washington Act, § 5 (j), (k) and 7; see ante § 124, this volume. Wisconsin Act, § 2394-28, 1-2; see ante § 227, this volume.

<sup>64</sup> California Act, § 8 (3), (a); section 28; see ante § 263. Illinois Act, § 5½; see ante § 326, this volume. Kansas Act, §§ 14, 31, 33; see ante § 292, this volume. Massachusetts Act, Part II, § 22; see ante § 303, this volume. Michigan Act, Part II, § 22; see ante § 355, this volume. Nevada, no provision. New Hampshire Act, § 9; see ante § 296, this volume. New Jersey Act, § 11-21; see ante § 255, this volume. New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 208.

**§ 421. Serious, or intentional and wilful misconduct—Intoxication and drunkenness.**—It is a universal principle, contained in all of the Workmen's Compensation and Insurance Statutes that the injured employes covered by the act shall be denied compensation in case the cause of the injury is attributable to the "serious, or intentional and wilful misconduct," "intoxication" or "drunkenness," etc., of such employé. For example, the Rhode Island<sup>65</sup> Act provides that:

"No compensation shall be allowed for the injury or death of an employé where it is proved that his injury or death was occasioned by his wilful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty."

The corresponding provisions of the other acts will be found in the foot note.<sup>66</sup>

#### Employer.

A majority of the statutes provide for augmentation of an injured employé's rights the cause of whose injury is attributable to wilful intention of the employer to cause the injury. For example, the New Hampshire<sup>67</sup> Statute provides:

"That the employer shall at the election of the workman, or his personal representative, be liable under provision of section 2 of this act for all the injury caused in

<sup>65</sup> Rhode Island Act, Article II, § 2; see ante § 367, this volume.

<sup>66</sup> California Act, § 2; see ante § 263, this volume. Illinois Act, § 8; see ante § 326, this volume. Kansas Act, § 1, (b); see ante § 292, this volume. Massachusetts Act, Part II, § 2; see ante § 303, this volume. Michigan Act, Part II, § 2; see ante § 355, this volume. New Hampshire Act, § 3; see ante § 296, this volume. New Jersey Act, § I, par. 1; § II, par. 7; see ante § 255, this volume. New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 206. Nevada Act contains no such provision. Ohio Act, § 21; see ante § 171, this volume. Washington Act, § 6; see ante § 124, this volume. Wisconsin Act, §§ 2394-4, 3; see ante § 277, this volume.

<sup>67</sup> New Hampshire Act, § 3; see ante § 296, this volume. Kansas Act, § 5. California Act, § 3.

whole or in part by wilful failure of the employer to comply with any statute, or with any order made under authority of law."

Similar provisions are found in other statutes in the foot note.<sup>68</sup>

**§ 422. Election of remedies.**—The Washington act makes it mandatory upon all employers covered by the law to pay the premiums assessed upon them by the Industrial Accident Board (sections 1 and 4 of act). The right of the employer and his employés to elect whether he or they shall be bound by the provisions of the act is denied both of them, except in the single instance, of rare occurrence, namely, where the cause of the injury or death of an employé covered by the act is due to the deliberate intention of the employer to produce such injury or death. In that case the employé, or in case of death, his legal representative, has the privilege of taking under the act and also of suing the employer at law,—as if the act had not been passed,—to recover any excess of damage over the amount received or receivable under section 6 of the act. A majority of the acts of the thirteen states provides for the election of both the employer and the employé whether they shall be bound by the provisions thereof respecting the payment and acceptance of compensation. Under the Ohio act, the right of election of the employé to accept the compensations provided by the law or to sue his employer is limited to a single case of rare occurrence, namely, when his employer wilfully causes the injury (see section 21-1 of act).

The discussion of the right of the election of remedies under compensation acts is closed with pointing

<sup>68</sup> California Act, § 3; see ante § 263, this volume. Kansas Act, § 5; see ante § 292, this volume. Massachusetts Act, Part II, § 3; see ante § 304, this volume. New York Act, N. Y. Laws 1910, ch. 352, Art. 14, § 205. Ohio Act, § 21; see ante § 171, this volume. Washington Act, § 6; see ante § 124, this volume.

out the provisions of the Illinois Act, in this respect. Under this act, the employer covered by the act, who does not accept the provisions of the same and is sued by an injured employé, loses the three so-called common-law defenses except as they are modified by the rule of comparative negligence (see section 1, pars. 1, 2, 3 of act). If such an employer elects to be bound by the provisions of the act, his employés or their dependents are compelled to accept the compensations provided by the law except where there has been a direct and intentional omission by the employer to comply with the statutory safety regulations, and such compensation shall not in any way be reduced by contributions from employés (section 7 of act). On the other hand if it is proved that the injury to the employé resulted from his deliberate intention to cause such injury, no compensation with respect to that injury shall be allowed (section 8 of act).

The citations of the corresponding provisions of the other acts are given in the foot notes.<sup>69</sup>

**§ 423. Alternative schemes of compensation permitted.**—The Washington<sup>70</sup> and Ohio<sup>71</sup> Acts are in fact straight compulsory insurance acts. The acts of Illinois, Nevada and New Jersey are compensation acts with direct employer's liability. The acts of the other

<sup>69</sup> California Act, §§ 1 and 2 and 3; see ante § 263. Kansas Act, §§ 1, 2 and 5 (a); see ante § 292, this volume. Massachusetts Act, Part I, §§ 1, 4 and 5; Part III, § 15; Part V, §§ 1 and 3; Part II, § 3; Part IV, § 22; see ante § 303, this volume. Michigan Act, Part I, § 4; see ante § 355, this volume. Nevada Act, §§ 11, 3, 1; see ante § 290, this volume. New Hampshire Act, §§ 2, 3, 4; see ante § 296, this volume. New Jersey Act, § I, pars. 1, 2, 4, 5; § II, par. 9; § III, par. 23; see ante § 255, this volume. New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 205. Rhode Island Act, Article I, § 7; see ante § 367, this volume. Wisconsin Act, § 2394-4; see ante § 227, this volume.

<sup>70</sup> Washington Act, §§ 4, 5, 9 and 15, 21-24; see ante § 124, this volume.

<sup>71</sup> Ohio Act, §§ 1 to 21; see ante § 171, this volume.

eight states provide for alternative plans at the election of both employer and employé, with the approval of state authority. There is no uniformity among these alternative schemes. As an example the Kansas<sup>73</sup> Act provides:

"If the superintendent of insurance by and with the advice and written approval of the attorney general certifies that any scheme of compensation, benefit or insurance for the workman of an employer in any employment to which this act applies, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workman, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act or their equivalents, the employer, may, while the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act; and thereupon the employer shall be liable only in accordance with that scheme; but save as aforesaid, this act shall not apply notwithstanding any contract to the contrary made after this act becomes a law.

"No scheme shall be so certified which does not contain suitable provisions for the equitable distribution of any moneys or securities held for the purpose of the scheme, after due provision has been made to discharge the liabilities already accrued, if and when such certificate is revoked or the scheme otherwise terminated.

"If at any time the scheme no longer fulfills the requirements of this article, or is not fairly administered, or other valid and substantial reasons therefor exist,

<sup>73</sup> Kansas Act, §§ 39-43; see ante § 292, this volume.

the superintendent of insurance by and with the attorney general shall revoke the certificate and the scheme shall thereby be terminated.

"Where a certified scheme is in effect the employer shall answer all such inquiries and furnish all such accounts in regard thereto as may be required by the superintendent.

"Sec. 43. The superintendent of insurance may make all rules and regulations necessary to carry out the purposes of the four preceding sections."

The citation of such schemes in the other acts are found in the foot note.<sup>74</sup>

**§ 424. Physical examination.**—Naturally enough, all of the compensation acts prescribe the manner in which physical examinations of injured employes covered by the same shall be made, because it is only in this way that the extent of the injury, and therefore the amount of the compensation can be determined. The Massachusetts<sup>75</sup> Act prescribes the manner of making physical examination of an injured employe as follows: Part II, "Section 19 (as amended by section 4 of ch. 571, Acts 1912). After an employe has received an injury, and from time to time thereafter during the continuance of his disability he shall, if so requested by the association or subscriber, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the commonwealth, furnished and paid for by the association or subscriber. The employe shall have the right to have a physician provided and paid for by himself present at the examination. If he

<sup>74</sup> Massachusetts Act, Part IV, §§ 1-24; see ante § 303, this volume. Michigan Act, Part IV, §§ 1-4; Part V, 1-11; see ante § 355, this volume; New Hampshire Act, § 3; see ante § 296, this volume. New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 203. Rhode Island Act, Article IV, 1-3; see ante § 367, this volume. Wisconsin Act, § 2394-26; see ante § 227, this volume.

<sup>75</sup> Massachusetts Act, Part II, § 19; see ante § 303, this volume.

refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited."

The provisions of the statutes of the other states are cited in the foot notes.<sup>76</sup>

**§ 425. Appeals.**—The right of any party having an interest under any of the compensation acts to appeal from a decision of a court or of a commission or board vested with authority to make awards on claims under the acts varies greatly in its scope. For example, under the Nevada Act, compensation is enforced by an action in court. Either party can appeal the same as in any other action. In compensation acts administered by a commission or a board the right of appeal is more restricted. In the Ohio Act it is limited to the single case where on any ground the board denies the claimant any relief whatever. See section 36 which reads:

"The board shall have full power and authority to hear and determine all questions within its jurisdiction, and its decision thereon shall be final.

"Provided, however, in case the final action of such board denies the right of the claimant to participate at all in such fund on the ground that the injury was self-inflicted or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claimant's right, then the claimant within thirty (30) days after the notice of the final

<sup>76</sup> California Act, § 11; see ante § 263, this volume. Illinois Act, § 9; see ante § 326, this volume. Kansas Act, § 17; see ante § 292, this volume. Michigan Act, Part II, § 19; see ante § 355, this volume. Nevada Act, § 7; see ante § 290, this volume. New Hampshire Act, § 7; see ante § 296, this volume. New Jersey Act, § II, par. 17; see ante § 255, this volume. New York Act, N. Y. Laws 1910, ch. 352, Art. 14, § 207, par. 2; Ohio Act, §§ 8 and 16; see ante § 171, this volume. Rhode Island, Article II, § 21; see ante § 367, this volume. Washington Act, § 13; see ante § 124, this volume. Wisconsin Act, § 2394-12; see ante § 227, this volume.

action of such board may, by filing his appeal in the common pleas court of the county wherein the injury was inflicted, be entitled to a trial in the ordinary way, and be entitled to a jury if he demands it. In such a proceeding, the prosecuting attorney of the county, without additional compensation, shall represent the state liability board of awards, and he shall be notified by the clerk forthwith of the filing of such appeal.

"Within thirty days after filing his appeal, the appellant shall file a petition in the ordinary form against such board as defendant and further pleadings shall be had in said cause, according to the rules of civil procedure, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant; and, if they determine the right in his favor, shall fix his compensation within the limits and under the rules prescribed in this act; and any final judgment so obtained shall be paid by the state liability board of awards out of the state insurance fund in the same manner as such awards are paid by such board.

"The cost of such proceeding, including a reasonable attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party. Either party shall have the right to prosecute error as in the ordinary civil cases."

Citations for the grounds of appeal found in the other acts are given in the foot note.<sup>77</sup>

<sup>77</sup> California Act, §§ 18 and 19; see ante § 263, this volume. Illinois Act, § 10; see ante § 326, this volume. Kansas Act, §§ 29 and 32; see ante § 292, this volume. Massachusetts Act, Part III, §§ 7, 10 and 11; see ante § 303, this volume. Michigan Act, Part III, §§ 11, 12 and 13; see ante § 355, this volume. New Hampshire Act, §§ 3 and 9; see ante § 296, this volume. New Jersey Act, § II, par. 18; see ante § 255, this volume. New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 208. Rhode Island Act, Article III, § 7; see ante § 367, this volume. Washington Act, §§ 20 and 25; see ante § 124, this volume. Wisconsin Act, §§ 2394-19, 2394-20 and 2394-21; see ante § 227, this volume.



§ 426. **Preference of claims for compensation.**—The Ohio, Kansas and Washington Acts contain no provisions on this subject. Under the statutes of Ohio<sup>78</sup> and Washington<sup>79</sup> there is no need of such provisions for the reason that the claim of the injured employé is against the state insurance fund, the employer having discharged his liability for personal injury claims by paying the premium assessed. There is no provision on this subject in the Massachusetts Act since awards in favor of injured employés are paid by the association;<sup>80</sup> but if the employer is insured in a liability insurance company such an award is secured by another provision of the act.<sup>81</sup> All of the other statutes contain specific provisions which give the injured employés preference of claims and awards for compensation of which the provision in the Illinois<sup>82</sup> Act is a fair type. It reads:

“Any person entitled to payment under the compensation provisions of this act from any employer shall have the same preferential claim therefor against the property of the employer as is now allowed by law for a claim by such person against such employer for unpaid wages or for personal services, such preference to prevail against wage claims of all other employés, not entitled to compensation for injuries.”

The citations of the other provisions are found in the foot note.<sup>83</sup>

<sup>78</sup> Ohio Act, § 20-1; see ante § 171, this volume.

<sup>79</sup> Washington Act, §§ 1 and 4; see ante § 124, this volume.

<sup>80</sup> Massachusetts Act, Part IV, § 22; see ante § 303.

<sup>81</sup> Massachusetts Act, Part V, § 3; see ante § 304.

<sup>82</sup> Illinois Act, § 11; see ante § 326, this volume.

<sup>83</sup> California Act, § 22; see ante § 263, this volume. Michigan Act, Part II, § 21; see ante § 355, this volume. Nevada Act, § 12; see ante § 290, this volume. New Hampshire Act, § 10; see ante § 296, this volume. New Jersey Act, § II-22; see ante § 255, this volume. New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 209. Rhode Island Act, Article II, § 24, and Article IV; see ante § 367, this volume. Wisconsin Act, §§ 2394-24; see ante § 227, this volume.

**§ 427. Assignability and transference of rights of compensation under the acts.**—The Massachusetts<sup>84</sup> Act provides that “No agreement by an employé to waive his rights to compensation under this act shall be valid and no payment under this act shall be assignable or subject to attachment, or be liable in any way for debts.” The acts of the other eleven states contain substantially identical provisions modified to correspond to the limitations of the acts and restrictions of the general laws of the respective states.<sup>85</sup>

**§ 428. Exemption of employers from provisions of act by contracts.**—All of the Compensation Statutes excepting those of Ohio, New Hampshire, Kansas and New York contain provisions against the exemption of an employer from complying with the provisions of the same. In this respect the Washington Act provides:

“Section 11. No employer or workman shall exempt himself from the burden or waive the benefit of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.”

Citations of similar provisions of the other statutes will be found in the foot note.<sup>86</sup>

<sup>84</sup> Massachusetts Act, Part I, §§ 20 and 21; See ante, § 304, this volume.

<sup>85</sup> Acts of California, § 22; see ante § 263, this volume. Illinois Act, §§ 11 and 13; see ante § 326, this volume. Kansas Act, §§ 15 and 38; see ante § 292, this volume. Michigan Act, §§ 20 and 21; see ante § 355, this volume. New Hampshire Act, §§ 10 and 11; see ante § 296, this volume. New Jersey Act, § I, par. 6, and § 11, par. 22; see ante § 255, this volume. Nevada Act, no provision. New York Act, N. Y. Laws 1910, ch. 352, Article 14, § 209. Ohio Act, § 35; see ante § 171, this volume. Rhode Island Act, Article II, §§ 22 and 23; see ante § 367, this volume. Wisconsin Act, § 2394-23; see ante § 227, this volume. Washington Act, §§ 10 and 11; see ante § 124, this volume.

<sup>86</sup> California Act, § 2; see ante § 263, this volume. Illinois Act, § 3; see ante § 326, this volume. Massachusetts Act, Part II, § 20; see ante § 303, this volume. Michigan Act, Part II, § 20; see ante § 355, this volume. Nevada Act, § 1-(2); see ante § 290, this volume.

§ 429. **Penalties for refusing to comply with provisions of the acts.**—Most of the acts impose penalties for their violation. In the Illinois<sup>87</sup> Act it is provided: "Any wilful neglect, refusal, or failure to do the things required to be done by any section, clause, or provision of this act, on the part of the person herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, member of an arbitration board herein provided for, or with the secretary of the Bureau of Labor Statistics or his deputy, in the discharge of the duties herein imposed upon any of them, or any refusal to comply with the terms of the act, shall be deemed a misdemeanor, punishable by a fine of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00), at the discretion of the court." A specific illustration of the foregoing is the provision found in the New Hampshire<sup>88</sup> and Michigan<sup>89</sup> Acts for the failure to make reports required by these acts. In the statutes of Kansas,<sup>90</sup> Rhode Island,<sup>91</sup> and in substance in the Ohio<sup>92</sup> Act, it is provided that "Nothing in this act shall affect the liability of the employer or employé to a fine or penalty under any other statute." Such penalties are not found in the California, Nevada, New Jersey and New York Acts.

New Jersey Act, § II, pars. 7 and 8; see ante, § 255, this volume. Rhode Island Act, Art. II, § 22, and Art. IV; see ante § 367, this volume. Washington Act, § 11; see ante § 124, this volume. Wisconsin Act, § 2394-2; see ante § 227, this volume.

<sup>87</sup> Illinois Act, § 23; see ante § 326, this volume. Massachusetts Act, Part IV, § 19; see ante § 303, this volume. Washington Act, §§ 16, 9, 8, 6; see ante § 124, this volume. Wisconsin Act, § 2394-17; see ante § 227, this volume.

<sup>88</sup> New Hampshire Act, § 12; see ante § 296, this volume.

<sup>89</sup> Michigan Act, Part II, § 17, and Part IV, Sec. 8; see ante § 355, this volume.

<sup>90</sup> Kansas Act, § 3; see ante § 292, this volume.

<sup>91</sup> Rhode Island Act, Art. V, § 2; see ante § 367, this volume.

<sup>92</sup> Ohio Act, § 38; see ante § 171, this volume.

**§ 430. Attorney's fees.**—All of the compensation statutes contain provisions respecting the recovery of attorney's fees for services in connection with the recovery of a judgment on an award under the statutes excepting California, which is silent on the question.

The rule respecting the claim of attorney's fees for services in securing a recovery under the acts of Illinois,<sup>93</sup> Kansas,<sup>94</sup> New Hampshire,<sup>95</sup> New Jersey,<sup>96</sup> New York,<sup>97</sup> and Rhode Island,<sup>98</sup> are substantially the same, namely, no such claim "shall be an enforceable lien thereon unless the amount of the same be approved in writing by a judge of a court of record" or "by the judge of the court where said case was tried," or in absence of a trial "by any judge of the district court \* \* \*." Under the statutes of Massachusetts<sup>99</sup> and Michigan<sup>1</sup> such fees of "attorneys and physicians for services under the acts shall be subject to the approval of the industrial accident board." The Nevada<sup>2</sup> Act provides that "costs of suit and reasonable attorney's fees" shall be allowed. In Ohio<sup>3</sup> on appeals from awards by the board, court costs and a reasonable attorney's fee to claimant's attorney shall be taxed against the losing party by the trial court. On such an appeal in Washington<sup>4</sup> a reasonable attorney's fee is "fixed by the court in the case." Under the Wisconsin<sup>5</sup> Statute no lien for attorney's fees for collection of such claim shall be allowed to exceed

<sup>93</sup> Illinois Act, § 11; see ante § 326, this volume.

<sup>94</sup> Kansas Act, § 15; see ante § 292, this volume.

<sup>95</sup> New Hampshire Act, § 11; see ante § 296, this volume.

<sup>96</sup> New Jersey Act, § 1-6; see ante § 255, this volume.

<sup>97</sup> New York Act, N. Y. Laws 1910, ch. 352, Art. 14, § 209.

<sup>98</sup> Rhode Island Act, Art. II, § 3; see ante § 367, this volume.

<sup>99</sup> Massachusetts Act, Part III, § 10; see ante § 303, this volume.

<sup>1</sup> Michigan Act, Part III, § 10; see ante § 355, this volume.

<sup>2</sup> Nevada Act, § 9; see ante § 290, this volume.

<sup>3</sup> Ohio Act, § 36; see ante § 171, this volume.

<sup>4</sup> Washington Act, § 20; see ante § 124, this volume.

<sup>5</sup> Wisconsin Act, § 2394-22; see ante § 227, this volume.

10 per cent. of the amount of the settlement or payment on account of the claim.

**§ 431. Expenses of administration of acts.**—The California<sup>6</sup> Act appropriated \$50,000 from the state treasury to be used by the Industrial Accident Board to carry out the purpose of the act. The Illinois, Nevada, New York and Rhode Island Acts make no such provision, their administration being under the direction of the courts.

The Kansas<sup>7</sup> Act provides for the fixing of arbitrators' fees by agreement of the parties and in the absence of such agreement "they shall not exceed \$10.00 per day, for not to exceed ten days and disbursements for expenses." The arbitrator shall tax the cost of such fees in his discretion and add the amount taxed against the employer to the first payment under the award and note the amount of his fees on the award and shall have a lien therefor on the first payment under the award.

Massachusetts<sup>8</sup> Act provides that the salaries and expenses of the Industrial Accident Board, including the secretary thereof, and an annual allowance not to exceed \$10,000 for clerical service, traveling and other necessary expenses. The costs of the administration of the Employers' Insurance Association is made a part of the premium levied against the employers who are members thereof. The salaries of the directors of the association are paid by the commonwealth.

The Michigan<sup>9</sup> Act appropriates \$25,000 for the year ending January 30th, 1913, and annually thereafter to be raised by general taxation to pay the expenses of the Industrial Accident Board.

<sup>6</sup> California Act, § 29; see ante § 263, this volume.

<sup>7</sup> Kansas Act, § 26; see ante § 292, this volume.

<sup>8</sup> Massachusetts Act, Part III, § 2, Part IV, §§ 14, 15, 16; Part IV, § 24; see ante § 303, this volume.

<sup>9</sup> Michigan Act, Part IV; Part VI, § 7; see ante § 355, this volume.

The administration of the New Hampshire<sup>10</sup> Act is under the supervision of the Commissioner of Labor, whose salary is paid by the state. The procedure of the act is under the direction of the state courts and to the extent that the entire administration of the act increases the cost of these officials, the costs of administration is paid by the state.

New Jersey<sup>11</sup> Act is administered by the common pleas courts and to the extent that additional expense is thereby added to the cost of their administration it is paid by the state. The special act, chapter 241, par. 1 and 2, 1911, provides for the creation of employers' liability commission to observe the operation of the compensation act and for the payment of the salaries of the secretary and of the clerk and traveling expenses of the commissioners. Said expenses of the commission are paid from the state treasury.

The entire cost of the administration of the Ohio<sup>12</sup> Act is paid by the state and no part of the state insurance fund created by premiums paid by the employers can be used for any other purpose than to pay compensation awards.

The administration of the Rhode Island<sup>13</sup> Act is under the supervision of the superior court and the costs of such administration are taxed by that court.

The Washington<sup>14</sup> Act appropriates \$50,000 or so much as is necessary from the state treasury to pay the salaries of the Industrial Insurance Commissioners, traveling and office expenses and all other expenses of the administration of the accident fund.

The Wisconsin<sup>15</sup> Act appropriates from the state

<sup>10</sup> New Hampshire Act, §§ 3 and 9; see ante § 296, this volume.

<sup>11</sup> New Jersey Act, § II, par. 18; see ante § 255, this volume.

<sup>12</sup> Ohio Act, §§ 1 to 15, and 41; see ante § 171, this volume.

<sup>13</sup> Rhode Island Act, Art. III, § 15, and Article IV, Sec. 3; see ante § 367, this volume.

<sup>14</sup> Washington Act. § 29; see ante § 124, this volume.

<sup>15</sup> Wisconsin Act, § 2394-14-30; see ante § 227, this volume.

treasury a sum sufficient to pay the salaries of the members of the Industrial Accident Board, its secretary, necessary clerical help and their actual and necessary expenses while traveling on the business of the board.





## CHAPTER XXVI.

### WHO ARE WORKMEN WITHIN MEANING OF STATUTE.

Sec.	Sec.
432. Meaning of term "workman."	439. Term "workman" does not include policeman.
433. Partners.	440. Casual employment.
434. Work on shares.	441. Employés temporarily lent or hired.
435. Work on shares—Taxicab drivers.	442. Concurrent contracts of service.
436. Employment in agriculture.	443. Effect of unauthorized employment of servant.
437. Employment by charity organizations for the unemployed.	444. Independent contractors.
438. Professional ballplayer a workman.	445. Members of employer's family.

§ 432. Meaning of term "workman."—The courts have encountered much difficulty in construing the term "workman" in cases where the services performed were not strictly manual in character. It may be said generally that the character of the employé as a workman depends upon the general scope of his employment and is not determined by the mere fact that manual labor is performed as an incident to administrative and other work of a higher character than that intended by the statute. Thus, for example, a skilled chemist who had obtained a scientific degree in a university was engaged by the owner of some chemical works under a written agreement where he was engaged for five years at a yearly salary. By this agreement he bound himself to obey all orders of those in authority and such work as might be allotted to him, but the general effect of the whole agreement was that he was to bring his scientific knowledge to bear for the benefit of the business of his employer. A certain amount of manual

labor was required of him and he spent only about one-sixth of his time in the laboratory. He was fatally injured in an accident and was refused compensation on the ground that he was not a workman but a skilled expert.<sup>1</sup>

In another case the certificated manager of a coal mine, who received a considerable salary payable monthly and a free house and coal was held not a workman though his duty frequently took him into the mine, but he was not required and did not perform any manual labor. The court admitted that this case was very close to the line.<sup>2</sup>

A law writer working at piece work is a workman within the meaning of the law.<sup>3</sup>

A lecturer is not a workman.<sup>4</sup>

**§ 433. Partners.**—A partner acting as a working foreman for the firm on salary is not entitled to compensation from his partners for injuries received while acting as foreman.<sup>5</sup>

**§ 434. Work on shares.**—The British Act expressly excludes persons who are remunerated by a share in the profits of the working of a vessel and it is not required that the parties should be solely remunerated by the share in the profits.<sup>6</sup>

The latter view was taken in the case of an engineer on a steam fishing vessel who was injured, and under the contract he was remunerated by a share of the net profits of catches of fish with a guarantee by the owners of the vessel, that should his share fall short of

<sup>1</sup> *Bagnall v. Levinstein*, 96 L. T. 184, 9 W. C. C. 100.

<sup>2</sup> *Simpson v. Ebbw-Vale, etc., Coal Co.*, 92 L. T. 282, 7 W. C. C. 101.

<sup>3</sup> *McKrell v. Howard*, 2 B. W. C. C. 460.

<sup>4</sup> *Waites v. Franco-British Exhibition Co.*, 23 T. L. R. 441, 2 B. W. C. C. 199.

<sup>5</sup> *Ellis v. Ellis*, 92 L. T. 718, 7 W. C. C. 97.

<sup>6</sup> *Admiral Fishing Co. v. Robinson*, (1910) 3 B. W. C. C. 247.

a specified amount a week they would make it up to that amount.<sup>7</sup>

The rule was applied and compensation denied in a case where a vessel was sailed under the sharing system and the captain was at liberty to take any cargoes to any place he pleased and the owner was to receive one-third of the gross receipts and make necessary repairs to the ship. The captain received the remaining two-thirds and had to pay and feed the crew whom he engaged, and pay harbor dues. The vessel went down with all hands.<sup>8</sup>

In another case a member of a crew of a fishing vessel was injured while the vessel was at sea and engaged in fishing. The method of remuneration was settled by an award made by a conciliation board. It was as follows: From the gross price of the fish sold after any trip the owners of the vessel were entitled to deduct commission, discount and other expenses pertaining to the trip. The net balance remaining was then divided into shares of which injured seamen received one. This was held a case where the seamen came within the express terms of the act and being remunerated by a share in the profits was excluded and this, although he was allowed a specified daily wage when employed in port in cleaning and making repairs on the vessel.<sup>9</sup>

In another case it was held that a member of the crew of a trawler who was remunerated by a share in the profits of the working of a vessel, was interested in the totality of the adventure, and not merely in one part of it. He voluntarily accepted, with the consent of the master of the vessel the duty of stowing fish boxes

<sup>7</sup> *Admiral Fishing Co. v. Robinson*, 3 B. W. C. C. 247.

<sup>8</sup> *Boon v. Quance*, 3 B. W. C. C. 106; see also *Hughes v. Postlethwaite*, (1910) 4 B. W. C. C. 105.

<sup>9</sup> *Aberdeen, etc., Fishing Co. v. Gill*, 45 Scotch L. R. 247, 1 B. W. C. C. 274.

upon another boat which collected the fish from a fleet of trawlers and during this work sustained a personal injury. It was decided that this act was voluntarily done in his character of a share fisherman and that it was not a new employment.<sup>10</sup>

But the injured person will be held to sustain the relation of a workman where there is an entire absence of any proof of partnership or joint adventure in the course of trading.<sup>11</sup>

Thus in one of the cases the evidence showed that the master had paid wages to some of the crew in a public house and after some delay on his return to the vessel fell into the dock and was drowned. The widow said that her husband was a servant of the owners and she brought books showing that her husband received two-thirds of the gross freight out of which he paid the disbursements and expenses of the vessel; one-third of the gross freight he remitted to the owners. The owners called no evidence as to the relationship between the master and himself. It was held that a contract of service existed between the parties and not a contract of sharing.<sup>12</sup>

In another case the seaman was similarly remunerated. The boat was maintained by the owner and the seaman was the subject to his orders. When not required by the owners the boat performed services for other fishermen and the rates charged were the same as those paid by the owner to the boat for similar work. When the sailor was not employed afloat, the owner, whenever possible, supplied him with work ashore for which he paid him wages. No part of the capital was supplied by the injured seaman nor was he liable for

<sup>10</sup> *Whelan v. Great Northern, etc., Fishing Co.*, 100 L. T. 912, 2 B. W. C. C. 235.

<sup>11</sup> *Carswell v. Sharp*, 47 Scotch L. R. 335, 3 B. W. C. C. 552; *Jones v. The Alice & Eliza*, 3 B. W. C. C. 495.

<sup>12</sup> *Jones v. The Alice & Eliza*, 3 B. W. C. C. 495.

any loss that might have occurred. It was held that he was not a partner but a workman and that the boat itself was not a fishing boat within the meaning of the act although it was engaged in the fishing industry in carrying the cargo between the curing stations and vessels lying off shore.<sup>13</sup>

**§ 435. Work on shares—Taxicab drivers.**—A taxicab driver who takes out a cab under a contract to pay over to the owners a certain per cent. of his daily takings and retaining the balance less the price of the gasoline which he purchases from the cab owners is not a "workman" within the meaning of compensation laws. The transaction is one of bailment and his relation is that of bailor.<sup>14</sup>

**§ 436. Employment in agriculture.**—The courts are not inclined to put a close construction on employment in agriculture within the meaning of the compensation act of 1900. One of the courts has held that a carpenter employed all the time on a farm was a worker in agriculture where some of his time was spent in the fields during the harvest season and about three months of each year was spent as game keeper for his employer.<sup>15</sup>

**§ 437. Employment by charity organizations for the unemployed.**—One is a workman though his employment has in it some of the elements of philanthropy. Accordingly, it has been held that a distress committee under the unemployed workman act of 1905, which provided temporary employment for an applicant, was liable for injury to such applicant in the course of employment furnished him by the committee and

<sup>13</sup> *Jamieson v. Clark*, 46 Scotch L. R. 73, 2 B. W. C. C. 228.

<sup>14</sup> *Doggett v. Waterloo Taxicab Co.*, 3 B. W. C. C. 371; *Bates-Smith v. General Motor Cab Co.*, 4 B. W. C. C. 249.

<sup>15</sup> *Smith v. Coles*, 93 L. T. 754, 8 W. C. C. 116.

that he was not to be denied this compensation by the fact that during incapacity he received poor relief.<sup>16</sup>

In such a case Moulton, L. J., said, "I am clear that the intention of the legislature was to constitute this Central body as a body which was empowered to employ at wages those who were in a destitute condition. They did employ this man at wages, and the scheme of the workman's compensation act, to my mind makes compensation for accidents almost inseparable from wages and certainly inseparable from a contract of service which I think existed here."<sup>17</sup>

In another case a blind man was injured while employed in the industrial department of a blind institution. This department was supported partly by charitable contributions. The institution gave the man his board, lodging and five shillings a month and received on his account charitable and parochial assistance which came to a little less than the amount expended on him. It was held that the man was a workman and entitled to compensation for injuries sustained by him in the department.<sup>18</sup>

But it is essential to the right to compensation that the applicant should establish a contract of service between himself and the organization sought to be charged.<sup>19</sup>

This element was held to be lacking in the case of a dispensary medical officer employed by Guardians of Poor at a specified yearly salary who sustained fatal injury while engaged in the discharge of his duties.<sup>20</sup>

<sup>16</sup>*Gilroy v. Mackie*, 46 Scotch L. R. 325, 2 B. W. C. C. 209; *Porton v. Central Unemployed Body*, 100 L. T. 102, 2 B. W. C. C. 296.

<sup>17</sup>*Porton v. Central Unemployed Body*, 100 L. T. 102, 2 B. W. C. C. 296.

<sup>18</sup>*Macgillivray v. Northern Counties Institute*, 48 Scotch L. R. 811, 4 B. W. C. C. 429.

<sup>19</sup>*Burns v. Manchester, etc., Mission*, 125 L. T. J. 336, 1 B. W. C. C. 305.

<sup>20</sup>*Murphy v. Enniscorthy Board of Guardians*, 42 Ir. L. T. 246, 2 B. W. C. C. 291.

A nurse employed by an association whose object was to provide duly qualified nurses to attend on the sick in a certain neighborhood has been held not a servant or workman of the association.<sup>21</sup>

**§ 438. Professional ballplayer a workman.**—The English Court of Appeal holds that a professional football player engaged by a club under contract is a workman within the meaning of the compensation act, and is entitled to compensation for injuries sustained by him while playing for the club. In this case Farwell, L. J., said: "The appellants have taken two points. First, they say that this was no contract of service because the respondent was at liberty to use his own intelligence in playing the game. I think that is no answer. For a man may be employed in a contract of service where he does so exercise his intelligence. If there were no duty to obey then there might well be no contract of service. But the respondent not only agreed to conform to the rules of the football association but he agreed to obey the general instructions of the club. I cannot doubt that he had also to obey the instructions of the captain—the delegate of the club—given during the progress of the game. Then it is said that this is not an agreement for work and that therefore the respondent was not a workman. But that which is a sport to an amateur may well be work to a professional. It is impossible to give effect to this contention."<sup>22</sup>

**§ 439. Term "workman" does not include policeman.**—Members of a police force do not share in the benefits of the compensation act and this is true though the injuries are received while the policeman is acting as a member of the fire brigade, which act is a part of his duty as a policeman.<sup>23</sup>

<sup>21</sup>Hall v. Lees, (1904) 2 K. B. 602.

<sup>22</sup>Walker v. Crystal Palace Football Club, 3 B. W. C. C. 53.

<sup>23</sup>Sudell v. Blackburn Corporation, 3 B. W. C. C. 227.

**§ 440. Casual employment.**—The word “workman” in the British Act of 1906 “does not include a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer’s trade or business.” In construing this provision the court of appeal has said, “The employer referred to in the second limb of this sentence is the person giving the employment referred to in the first limb. The effect of the second limb of the sentence is that if the man be employed for the purposes of a trade or business, the employer is liable to him, even though the employment be of a casual nature.” The act distinctly intends that where employment is in a trade or business the liability should be limited to the case of servants whose employment is not casual but stable.<sup>24</sup>

The employment of a window cleaner at irregular intervals to clean the windows of a dwelling house although that same person may have been engaged for a period of some years, has been held a casual employment only.<sup>25</sup>

Under this provision in order to entitle one to compensation, it is essential first that the employment should not have been of a casual nature; and second that it was for the purposes of the business of the employer. Both these conditions must be present.<sup>26</sup>

“The meaning of ‘casual employment’ is best arrived at by considering its opposite.”<sup>27</sup>

The employment of a carpenter making repairs on a building, to cut down trees on the premises after the employment was finished has been held an employment of a casual nature, having nothing to do with the trade or business of the employer.<sup>28</sup>

<sup>24</sup>Hill v. Begg, 24 T. L. R. 711, 1 B. W. C. C. 320.

<sup>25</sup>Rennie v. Reid, 45 Scotch L. R. 814, 1 B. W. C. C. 324.

<sup>26</sup>Rennie v. Reid, 45 Scotch L. R. 814, 1 B. W. C. C. 324.

<sup>27</sup>McCarthy v. Norcott, 43 Ir. L. T. 17, 2 B. W. C. C. 279.

<sup>28</sup>McCarthy v. Norcott, 43 Ir. L. T. 17, 2 B. W. C. C. 279.



Though the work is of a casual nature compensation will be allowed where the work is for the purpose of the employer's trade or business.<sup>29</sup>

This was the case where a farmer required some tiles put on the roof of his granary and employed a bricklayer to put them on and during the progress of the work the bricklayer sustained injuries. Compensation was awarded.<sup>30</sup>

A similar conclusion was reached in a case where a woman was employed at a house on Friday in each week and on Tuesday in alternate weeks and she suffered personal injury in the course of and arising out of such employment. This employment was not casual but stable as well as periodic.<sup>31</sup>

**§ 441. Employés temporarily lent or hired.**—In section 13 of the British Act it is provided that where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person. In one of the cases the respondents were owners of a threshing machine which they let out on hire to farmers. They were bound by statute to have three men to attend the machine, two to look after the engine and a third as a "road man." At farms the road man acted as assistant in the threshing, being paid for this by the farmer and not by the respondents, within the meaning of this section. While engaged in the threshing the applicant was injured, and claimed com-

<sup>29</sup>*Blyth v. Sewell*, 126 L. T. J. 552, 2 B. W. C. C. 476.

<sup>30</sup>*Blyth v. Sewell*, 126 L. T. J. 552, 2 B. W. C. C. 476. See also *Johnston v. Monasterevan, etc., Store Co.*, 42 Ir. L. T. 268, 2 B. W. C. C. 183.

<sup>31</sup>*Dewhurst v. Mather*, 24 T. L. R. 819, 2 B. W. C. C. 328. See also *Bargewell v. Daniel*, 123 L. T. J. 487, 9 W. C. C. 142 (white-washer).

pensation from the respondents, who denied liability, stating the farmer was employer. It was held that the respondents were the employers.<sup>32</sup>

The owner of a vessel and not the charterer is the employer of members of the crew where the owner is bound to provide and pay the crew and alone has the power to dismiss the members of the crew.<sup>33</sup>

A lecturer at an exhibition is not a workman within the meaning of the act.<sup>34</sup>

**§ 442. Concurrent contracts of service.**—It is provided by the British Act of 1906 that where a workman has entered into concurrent contracts of employment with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident. In estimating the compensation to which the dependents of a workman killed by accident are entitled when such workman has worked continuously for three years for the same employer no account can be taken of the wages earned by him under concurrent contracts with other employers.<sup>35</sup>

In one of the cases the applicant was injured at a laundry, where she earned a certain sum a week. She also received from another person a small sum a week for teaching children to play the piano at their own home, where she went for that purpose every Saturday. It was held that the applicant's arrangement for teach-

<sup>32</sup>Reed v. Smith, 3 B. W. C. C. 223. See also Boswell v. Gilbert, 127 L. T. J. 146, 2 B. W. C. C. 251.

<sup>33</sup>Mackinnon v. Miller, 46 Scotch L. R. 299, 2 B. W. C. C. 64.

<sup>34</sup>Waites v. Franco-British Exhibition, 25 T. L. R. 441, 2 B. W. C. C. 199.

<sup>35</sup>Buckley v. London & India Docks, (1909) 127 L. T. J. 521, 2 B. W. C. C. 327.

ing the piano was not a "contract of service," that the applicant, therefore, had not entered into concurrent contracts of service within the meaning of the law and compensation was awarded on the basis of the laundry work. The question whether the applicant, in her arrangement for teaching the piano, was a workman under a contract of service was a question of fact. And it is believed that an usher in a private school or a teacher in a provided or non-provided school, or a nursery governess, would, under ordinary circumstances, be entitled to claim the benefit of the act.<sup>36</sup>

**§ 443. Effect of unauthorized employment of servant.**—It is essential to the servant relation that there should have been a valid contract of employment. Where the employment of a servant is delegated to another servant, the one so employed is not, according to an English decision, a servant unless the employing servant has conformed to his master's instructions. Thus, where a servant is directed by his master to employ a boy and instead he employs an old man the latter is not strictly a servant of the master within the meaning of the compensation law.<sup>37</sup>

**§ 444. Independent contractors.**—The term "workman" does not include an independent contractor for work wherever done.<sup>38</sup>

This is the status of one employed to a particular piece and in the performance of the work he employs his own help.<sup>39</sup>

<sup>36</sup> *Simmons v. Health Laundry Co.*, (1910) 1 K. B. 543, 102 L. T. 210, 3 B. W. C. C. 200.

<sup>37</sup> *McClelland v. Todd*, 43 Ir. L. T. J. 75, 2 B. W. C. C. 472.

<sup>38</sup> *Simmons v. Faulds*, 17 T. L. R. 352, 3 W. C. C. 169; *Evans v. Penwylt, etc., Brick Co.*, 18 T. L. R. 58; *Vamplew v. Parkgate, etc., Steel Co.*, (1903) 1 K. B. 851; *Chisholm v. Walker*, (1908) 46 Scotch L. R. 24, 2 B. W. C. C. 261; *Maynard v. Robinson*, 89 L. T. 136; *Boyd v. Doharty*, 46 Scotch L. R. 71.

<sup>39</sup> *Vamplew v. Parkgate, etc., Steel Co.*, (1903) 1 K. B. 851; *Chisholm v. Walker*, 46 Scotch L. R. 24, 2 B. W. C. C. 261.

The injured party was held not an independent contractor in a case where many of the elements of the relation appeared but the employers specially agreed to compensate such person in case of injury by accident.<sup>40</sup>

§ 445. **Members of employer's family.** The English compensation act excludes from its benefits, members of the family of the employer dwelling in his house. The term "member of a family" includes a son, and he is considered as dwelling in his employer's house, though at the time of receiving his injuries he is absent from his home at a distant point on his father's business.<sup>41</sup>

<sup>40</sup> Evans v. Penwylt, etc., Brick Co., 18 T. L. R. 58, 4 W. C. C. 101.

<sup>41</sup> McDougall v. McDougall, 48 Scotch L. R. 315, 4 B. W. C. C. 373.

## CHAPTER XXVII.

### INJURIES FOR WHICH COMPENSATION ALLOWED.

Sec.	Sec.
446. Meaning of term "accident".	461. Occupational diseases—Apportionment between different employers.
447. Inference that injury a result of accident.	462. Injuries from violence at the hands of a third person.
448. Refusal to undergo a surgical operation.	463. Acceleration of existing disease by accident.
449. Injury from elements—Heat, cold and lightning.	464. Defective medical treatment.
450. Death from anaesthetic administered in operation.	465. Extraterritorial effect of compensation laws.
451. Nervous shocks.	466. Whether injury must be natural or proximate cause of accident.
452. Incapacity through nervousness—Simulation.	467. Wilful misconduct.
453. Poisoning.	468. Wilful misconduct—Intoxication.
454. Apoplexy as an accident.	469. Wilful misconduct—Misrepresentation as to age.
455. Injuries from inhalation of gases.	470. Dismissal of incapacitated person for his own misconduct.
456. Injuries to sight.	471. Suicide while insane.
457. Heart injuries.	
458. Strains and ruptures.	
459. Gradual paralysis.	
460. Injury while undergoing epileptic fit.	

§ 446. **Meaning of term "accident."**—The word "accident" in the English statute is taken in its popular and ordinary sense. It denotes or includes any unexpected personal injury resulting to the workman in the course of his employment from any unlooked for mishap or occurrence.<sup>1</sup>

Said Lord Lindley in the leading case of *Fenton v.*

<sup>1</sup>*Fenton v. Thorley*, (1903) A. C. 443. See also *Roper v. Greenwood*, (1900) 83 L. T. 471; *Stewart v. Wilson, etc., Co.*, (1903) 5 F. 120; *Hensey v. White*, (1900) 1 Q. B. 481, overruled.

Thorley: "The word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known, the loss or hurt itself would certainly be called an accident. The word 'accident' is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish careless from other unintended and unexpected events."<sup>2</sup>

The term "accident" used in insurance policies is used in its ordinary and popular sense, as meaning, happening by chance; unexpectedly taking place; not according to the usual course of things; or not as expected. If the result is such as follows from ordinary means voluntarily employed, in a not unusual or unexpected way, it can not be called a result effected by accidental means.<sup>3</sup>

**§ 447. Inference that injury a result of accident.—**

The law does not require that the fact of the accident should be established by direct evidence. It may be established by circumstantial evidence which raises an inference that the injury was due to accident arising out of and in course of employment.<sup>4</sup>

Thus an engineer who was employed on board a small tug was last seen asleep in his bunk at five o'clock in the morning. One hour later he had disappeared, leaving his working clothes lying at the side of his bunk. The tug was to commence towing at seven o'clock and steam was

<sup>2</sup>Fenton v. Thorley, (1903) A. C. 443, K. B. 789.

<sup>3</sup>Mutual Accident Asso. v. Barry, 131 U. S. 100, 33 L. ed. 60, 9 Sup. Ct. 755.

<sup>4</sup>Mackinnon v. Miller, 2 B. W. C. C. 64; Astley v. Evans, (1911) 104 L. T. 373, 4 B. W. C. C. 209; Mitchell v. Glamorgan Coal Co., 23 T. L. R. 588, 9 W. C. C. 16; Wright v. Kerrigan, 45 Ir. L. T. 82, 4 B. W. C. C. 432; The Swansea Vale v. Rice, 104 L. T. 658, 4 B. W. C. C. 298.

ordered to be got up for that hour. He was entitled to be on deck between these hours. Two days afterwards, his body, clad in his ordinary sleeping clothes was found near the place where the tug had been moored on the morning in question. The engineer was unable to swim. In the opinion of the doctor who examined the body, death was due to drowning, but there was no direct evidence as to how the deceased had met his death. It was held that the arbiter was entitled to draw the inference of fact that the workman had accidentally fallen overboard the boat and drowned and that the accident arose out of and in the course of his employment.<sup>5</sup>

"The question is whether the finding is justified by a legitimate inference from the facts proved. The Judge is entitled to draw an inference, but he cannot arrive at it by guess or conjecture; and the onus is, in the first instance, on the applicant to furnish evidence from which an inference in the applicant's favor can be legitimately drawn."<sup>6</sup>

#### § 448. Refusal to undergo a surgical operation.—

It may be said generally that where a workman refuses to undergo a reasonable and safe operation which will relieve or remove his incapacity, his continued inability to work at his trade is the result of his refusal of remedial treatment and not the result of the original accident.<sup>7</sup>

The employer in such a case has the burden of showing that the operation would have accomplished its purpose.<sup>8</sup>

<sup>5</sup>Mackinnon v. Miller, 2 B. W. C. C. 64.

<sup>6</sup>Fennah v. Midland, etc., R. Co., (1911) 45 Ir. L. T. 192, 4 B. W. C. C. 440. See also Marshall v. The Wild Rose, 100 L. T. 739, 2 B. W. C. C. 76, 3 B. W. C. C. 514; Charles v. Walker, 25 T. L. R. 609, 2 B. W. C. C. 5.

<sup>7</sup>Warncken v. Moreland, 1 K. B. 184. See also Donnelly v. Baird, 45 Scottish L. R. 394; Paddington Borough Council v. Stack, 2 B. W. C. C. 402; Rothwell v. Davies, 19 T. L. R. 423; O'Neill v. Ropner, 42 Ir. L. T. 3, 2 B. W. C. C. 334.

<sup>8</sup>Marshall v. Orient Navigation Co., (1910) 1 K. B. 79; Carroll v. Gray, 47 Scotch L. R. 646, 3 B. W. C. C. 572.

The employé may justify his refusal on the ground that, in good faith, he followed the advice of his own doctor whose honesty and competency are not impeached and this although the balance of the medical testimony given at the hearing was to the effect that the operation was one which might reasonably and properly have been performed.<sup>9</sup>

The employer has the burden of proof that the refusal of the workman was unreasonable.<sup>10</sup>

**§ 449. Injury from elements—Heat, cold and lightning.**—The question often arises as to whether injuries from heat, cold and lightning can be classified as accidental injuries. The English courts generally take the view that frost bites are not accidental injuries to persons in climates where such injuries may reasonable be anticipated and may be obviated, by care in the matter of clothing and exercise. In a severe climate, frost bites are a normal incident to which everybody is subject.<sup>11</sup>

Sunstroke is classified as an accidental injury where the employé sustains such injury when set to work at a task which peculiarly exposes him to such injury, as where, for example, a common sailor is set to work painting a vessel on tropical seas where he gets not only the direct rays of the sun but also the reflected rays from the side of the ship.<sup>12</sup>

The rule is the same as to lightning. Injury from a stroke of lightning may be classified as an accident where the employé is put to work at an exposed place, as, for example, at the top of a tall building in course of construction.<sup>13</sup>

<sup>9</sup> *Fulton v. The Majestic*, (1909) 2 K. B. 54. See also *Ruabon Coal Co. v. Thomas*, 3 B. W. C. C. 32; *Tutton v. The Majestic*, 100 L. T. 644, 2 B. W. C. C. 346.

<sup>10</sup> *Hays Wharf v. Brown*, 3 B., 84—C. A.

<sup>11</sup> *Warner v. Couchman*, (1911) 1 K. B. 351, 4 B. W. C. C. 32; *Karemaker v. Corsican*, 4 B. W. C. C. 295.

<sup>12</sup> *Morgan v. Zenaida*, (1909) 25 T. L. R. 446, 2 B. W. C. C. 19.

<sup>13</sup> *Andrew v. Failsworth Industrial Soc.*, (1904) 90 L. T. 611. But



Generally sunstroke in other situations is regarded as a disease of the brain.<sup>14</sup>

Heatstroke, from working in front of a furnace is considered an accidental injury. "Such a stroke is an unusual effect of a known cause, often, no doubt, threatened, but generally averted by precautions which experience, in this instance, had not taught. It was an unlooked-for mishap in the course of his employment. In common language, it was a case of accidental death. I feel that in construing this act of Parliament, as in other cases, there is a risk of frustrating it by excess of subtlety, which I am anxious to avoid."<sup>15</sup>

**§ 450. Death from anaesthetic administered in operation.**—It is the holding of one of the cases that the unexpected death of a workman from the effects of an anaesthetic administered in the course of treatment of an accidental injury was a death from accident. The test of the question whether death was caused by accident in such a case is whether the operation was a reasonable step to be taken to obviate the consequences of the accident.<sup>16</sup>

**§ 451. Nervous shock.**—It would certainly seem that a nervous shock due to an accident is as much a personal injury due to accident as any other external physical injury, and this is the view of the English courts in passing upon this form of injury. Under these decisions when a man in the course of his employment goes to a place and sustains a nervous shock producing physiological injury which is not a mere transient emotional impulse, he sus-

see *Kelly v. Kerry County Council*, (1908) 42 Ir. L. T. 23, where the stroke was held not accidental, because injured person was on the ground and not specially exposed.

<sup>14</sup>*Dozier v. Fidelity, etc., Co.*, 45 Fed. 446, 13 L. R. A. 114.

<sup>15</sup>*Ismay v. Williamson*, (1908) 42 Ir. L. T. 213, 1 B. W. C. C. 232.

See *Johnson et al. v. Torrington*, (1909) 3 B. W. C. C. 68.

<sup>16</sup>*Shirt v. Calico Printers' Assn.*, (1909) 2 K. B. 51, 100 L. T. 740.

tains an accident arising out of and in the course of his employment.<sup>17</sup>

"The effects of an accident are at least twofold; they may be merely muscular effects—they almost always must include muscular effects—and there may also be and very frequently are effects which you may call mental or nervous or hysterical. \* \* \* The effects of this second class, as a rule, arise as directly from the accident which the workman suffered as the muscular effects do; and it seems to me entirely a fallacy to say that a man's right to compensation ceases when the muscular mischief is ended, but the nervous or hysterical effects still remain."<sup>18</sup>

Accordingly compensation was awarded to a workman incapacitated by reason of nervous shock caused by seeing and helping a fellow workman who sustained a shocking injury which resulted in his death.<sup>19</sup>

**§ 452. Incapacity through nervousness—Simulation.**—As a general rule a workman is entitled to claim compensation so long as the nervous effects remain and produce total or partial incapacity for work.<sup>20</sup>

But the nervousness intended is a real and not a fictitious nervous condition. It is not sufficient that an injured person did not return to his work because of a dread that he might injure himself again.<sup>21</sup>

Compensation may not be awarded for nervousness which an average, reasonable man could overcome. "It is one of the most difficult tasks we have in the working of the act dealing fairly with employers and men, to deal with cases which are partially neurasthenic, and where

<sup>17</sup> *Yates v. South Kirby, etc., Colliers*, 3 B. W. C. C. 418; *Eaves v. Blaenclydach Colliery Co.*, (1909) 2 K. B. 73, 100 L. T. 747, 2 B. W. C. C. 329.

<sup>18</sup> *Eaves v. Blaenclydach Colliery Co.*, (1909) 2 K. B. 73, 100 L. T. 747, 2 B. W. C. C. 329.

<sup>19</sup> *Yates v. South Kirby, etc., Collieries*, 3 B. W. C. C. 418.

<sup>20</sup> *Eaves v. Blaenclydach Colliery Co.*, 100 L. T. 747, 2 B. W. C. C. 329.

<sup>21</sup> *Pimms v. Pearson*, 2 B. W. C. C. 489, 126 L. T. J. 361.

the man does not desire to go back to work for a variety of reasons which have really nothing much to do with the original accident."<sup>22</sup>

**§ 453. Poisoning.**—It is the theory of the later English cases that injuries due to poison absorbed in the course of employment are accidental injuries.<sup>23</sup>

This was held to be the case where a workman employed in a wool combing factory where he handled wool taken from anthrax infected sheep, contracted anthrax by contact with the wool.<sup>24</sup>

The earlier cases took a narrower view.<sup>25</sup>

In a lead poisoning case the award was refused on a ground of impossibility of showing when the accident occurred.<sup>26</sup>

In any case it would seem necessary to establish very clearly the fact that the poisoning was an accidental injury.<sup>27</sup>

Thus where the injury was caused by the pressure of a boot which became too tight for the workman it was held that the resulting poisoned condition of the foot was not an accident.<sup>28</sup>

In one of the cases a scullion at a hotel was subject to a skin disease of which he had no knowledge and was

<sup>22</sup>Turner v. Brooks, 3 B. W. C. C. 22. See also Furness v. Bennett, 3 B. W. C. C. 195.

<sup>23</sup>Higgins v. Campbell, (1904) 1 K. B. 328; affd. in (1905) A. C. 230; Haylett v. Vigor, 1 B. W. C. C. 282; Groves v. Burroughes, 4 B. W. C. C. 185; Thompson v. Ashington Coal Co., 3 W. C. C. 21; Dotzauer v. Strand, Palace Hotel, 3 B. W. C. C. 387; Bailey v. Interstate Casualty Co., 8 App. Div. (N. Y.) 127.

<sup>24</sup>Higgins v. Campbell, (1904) 1 K. B. 328; affd. in (1905) A. C. 230.

<sup>25</sup>Walker v. Lilleshall, (1900) 81 L. T. 769; Steel v. Cammell, (1905) 2 K. B. 232, 7 W. C. C. 9.

<sup>26</sup>Steel v. Cammell, (1905) 2 K. B. 232, 7 W. C. C. 9. See also Williams v. Duncan, 1 W. C. C. 123.

<sup>27</sup>White v. Sheepwash, 3 B. W. C. C. 382; Hugo v. Larkins, 3 B. W. C. C. 228.

<sup>28</sup>White v. Sheepwash, 3 B. W. C. C. 382.

put to work at washing up crockery in a tank containing hot water, soft soap, and caustic soda. This caused his hands to become greatly inflamed and his nails to come off and disabled him for several months. It was held that this was an accident; "the mere circumstance that a perfectly healthy man would have met with it, is no answer at all."<sup>29</sup>

**§ 454. Apoplexy as an accident.**—A stroke of apoplexy brought on by over-exertion in the course of one's employment may amount to an accident within the meaning of compensation laws, but the evidence that the stroke was brought on by over-exertion must be clear. In one of the cases it appeared that a collier died of apoplexy during working hours in a mine. The majority of the doctors said that his arteries were very much diseased and that his apoplexy might have come upon him when asleep or when walking about or when over-exerting himself. The work of the collier on the day he received the stroke was not of such character as to cause any unusual strain. The court held that as the evidence as to the cause of the death was equally consistent with an accident and with no accident, and the burden of proving that it was due to accident rested on the applicants, such burden had not been discharged by them.<sup>30</sup>

**§ 455. Injuries from inhalation of gases.**—The inhalation of gases from an explosion in a coal mine which produced pneumonia was held an accident authorizing the award of compensation when this result was unusual and the most severe effects from this cause noticed in a long period of time had been nausea and headache.<sup>31</sup>

But compensation was denied in a case where a

<sup>29</sup> Dotzauer v. Strand, Palace Hotel, 3 B. W. C. C. 387. See also Cheek v. Harnsworth, 4 W. C. C. 3.

<sup>30</sup> Barnabas v. Bersham Colliery Co., 4 B. W. C. C. 119.

<sup>31</sup> Kelly v. Anchenlea Coal Co., (1911) 48 Scotch L. R. 768.

workman contracted enteritis from inhaling sewer gas in the course of his employment in sewers. This was not an accident within the meaning of the law.<sup>32</sup>

The case is stronger against accidental injury where the evidence is not clear that the injury resulted from the inhalation of gases.<sup>33</sup>

**§ 456. Injuries to sight.**—An accident within the meaning of the compensation laws was sustained by a workman who lost his sight from being struck by a piece of steel chipped off from a plate which he was chiseling. This was an unusual happening. Said Mr. Justice Martin "here the cause of the flying piece entering the eye was that the workman did not hold his chisel in exactly the right angle to make the piece fly clearly, or because of some undue hardness or defect in the metal or in the chisel, or for other causes which might be suggested which would be equally accidental, for 'as Lord Robertson said in *Fenton v. Thorley* (1903, A. C. 433, 5 W. C. C. 1), the word accident is not made inappropriate by the fact that the man hurt himself.'"<sup>34</sup>

But the cases are not harmonious. In another case a different conclusion was reached. In this case a lady's maid in the course of her employment was sewing in her employer's nursery which was lighted by electric light. A cockchafer flew into the room by an open window and so alarmed her that she involuntarily hit her eye with her hand and it permanently injured her eyesight. She was denied compensation on the ground that the injury did not arise out of her employment.<sup>35</sup>

**§ 457. Heart injuries.**—There is no case of accident within the compensation laws where the incapacity from a cardiac breakdown is due to the fact that the

<sup>32</sup>*Broderick v. London County Council*, (1908) 2 K. B. 807.

<sup>33</sup>*Eke v. Hart-Dyke*, (1910) 2 K. B. 677.

<sup>34</sup>*Neville v. Kelly*, (1907) 13 B. C. 125, 1 B. W. C. C. 432.

<sup>35</sup>*Craske v. Wigan*, (1909) 2 K. B. 635.

work on which the employé had been engaged for some time was too heavy for him. This is a case where repeated excessive exertion strains the heart until finally it is over-strained, and is not strictly an unlooked-for mishap or occurrence.<sup>36</sup>

So, in a case where a workman who had been suffering for some years from progressive heart disease died while hurrying to a railroad station with a parcel for his employer, it was held that his death was due to the disease and not to an accident.<sup>37</sup>

But the House of Lords held the case one of accident where a workman suffering from an aneurism in so advanced a state of disease that it might have burst at any time, ruptured the aneurism while tightening a nut with a spanner, which was quite an ordinary act in his work, and did not involve excessive strain. An aneurism is to be understood as an unnatural or abnormal dilation of an artery. The condition of the workman was held not decisive of the question of accident. According to Lord Loreborn, "an accident arises out of the employment when the required exertion producing the accident, is too great for the man undertaking the work, whatever the degree of exertion or the condition of health."<sup>38</sup>

**§ 458. Strains and ruptures.**—With good reason strains sustained by employés of normal health in raising unusual weights in the course of employment are generally regarded as accidental injuries.<sup>39</sup>

It has been very pertinently observed by an English court: "A man injures himself suddenly and unexpectedly by throwing all his might and all his strength and all his energy into his work by doing his best and utmost for his employer, not sparing himself or taking

<sup>36</sup>Coe v. Fife Coal Co., 2 B. W. C. C. 8.

<sup>37</sup>O'Hara v. Hayes, 44 Ir. L. T. 71, 3 B. W. C. C. 586.

<sup>38</sup>Clover v. Hughes, (1910) A. C. 242, 3 B. W. C. C. 275.

<sup>39</sup>Fenton v. Thorley, (1903) 89 L. T. 314; Boardman v. Scott, (1901) 85 L. T. 502; Purse v. Hayward, 1 B. W. C. C. 216.

thought of what may come to him, and then he is to be told that his case is outside the act because he exerted himself deliberately and there was an entire lack of fortuitous element. I cannot think that right."<sup>40</sup>

In one of the cases, a workman while engaged in his employment had an attack of cerebral hemorrhage as the result of exertion. The work was being performed in the usual mode. He was put to bed where he remained for four days when a second attack occurred, resulting in permanent disablement. His arteries were in a degenerate condition rendering an attack of hemorrhage more likely. It was held that the workman had sustained his injury by an accident arising out of his employment within the meaning of the compensation law.<sup>41</sup>

Ruptures resulting from lifting heavy objects are generally held fortuitous and unexpected events, in other words, accidents.<sup>42</sup>

Proof of an accident from this cause must be clearly established and not left to inference.<sup>43</sup>

In one of the English cases, a workman who was slightly ruptured at the time he entered employment, in the course of his work had to subject himself to an unusual though not a unique strain. The result of this strain was to increase the rupture and incapacitate the workman from following his employment. This was held an accident although it could be said with certainty to be an untoward or unexpected event.<sup>44</sup>

**§ 459. Gradual paralysis.**—In one of the English cases it was shown that a workman gradually acquired

<sup>40</sup>*Fenton v. Thorley*, (1903) 89 L. T. 314.

<sup>41</sup>*McInnes v. Dunsmuir*, 45 Scotch L. R. 804. But see *Hensey v. White*, 81 L. T. 767, 16 L. T. 64.

<sup>42</sup>*Timmins v. Leeds Forge Co.*, 16 T. L. R. 520.

<sup>43</sup>*Former v. Stafford*, 4 B. W. C. C. 223; *Walker v. Murrays*, 46 Scottish L. R. 741, 4 B. W. C. C. 409.

<sup>44</sup>*Fulford v. North Fleet Coal, etc., Co.*, 1 B. W. C. C. 222.

paralysis of his right leg through the strain of riding a heavy carrier tricycle for his employers. At the end of five years the condition so increased as to incapacitate him from work. The paralysis was declared not a personal injury but an accident by a breakdown in the course of labor. "It was a breakdown from overwork; waste over-running repair is not an accident."<sup>47</sup>

**§ 460. Injury while undergoing epileptic fit.**—In one of the cases arising under the compensation act of 1897, a workman, employed in unloading coal from a ship, who was required in the course of his duties to stand in the open hatchway through which the coal was being brought up from the hold, was seized with an epileptic fit while at work and fell into the hold and was severely injured. It was held that regard must be had to the proximate cause of the accident resulting in the injury, which was to be found in the necessary proximity of the workman to the hatchway and that the accident arose out of, as well as, in the course of his employment and that he was entitled to compensation.<sup>48</sup>

**§ 461. Occupational diseases—Apportionment between different employers.**—Where an occupational disease is contracted by gradual process and during the twelve months previous to the incapacity, the workman had been employed by two employers in the absence of any special risk or degree of the poison, in either employment, the period of employment by each employer is the basis of calculating the proportion of the compensation. Waste over-running repair is not an accident.<sup>49</sup>

The occupational disease must be connected with employment. There cannot be an allowance of compensation where the disease is in no way connected with the employment or the injury.<sup>49a</sup>

<sup>47</sup> Walker v. Hockney, 2 B. W. C. C. 20.

<sup>48</sup> Wilkes v. Dowell, (1905) 2 K. B. 225.

<sup>49</sup> Lees v. Waring, 127 L. T. J. 495, 2 B. W. C. C. 474.

<sup>49a</sup> London, etc., R. Co. v. Taylor, (1910) 4 B. W. C. C. 11.



**§ 462. Injuries from violence at the hands of a third person.**—It is generally held that an injury caused by an act of violence at the hands of a third person while the employé is engaged in the duties of his employment is an accidental injury for which compensation may be awarded.<sup>50</sup>

This was the rule in a case where a paymaster was robbed of his employer's funds and killed, while in the performance of his duty;<sup>51</sup> where a gamekeeper while in the discharge of his duties was attacked by a poacher and injured;<sup>52</sup> where an engineer was killed through the act of a boy who threw a stone from a bridge under which a train was passing.<sup>53</sup>

But this principle has been held without application to injuries sustained by workmen as the result of attacks made by strikers.<sup>54</sup>

Neither was it held applicable to injuries to a sailor on board his ship in a foreign port, who was struck by a stray bullet shot by a revolutionist.<sup>55</sup>

Fellow workmen causing injury to an employé are liable to indemnify employers under the compensation act, though the injury was a result of a breach of law and the workmen were convicted and fined for such breach.<sup>56</sup>

**§ 463. Acceleration of existing disease by accident.**—It is the rule that if a man who is already afflicted with an infirmity, is injured by an accident and thereby incapacitated from carrying on the work which he was

<sup>50</sup>*Anderson v. Balfour*, (1910) 44 Ir. L. T. 168, 3 B. W. C. C. 588; *Nisbet v. Rayne*, (1910) 2 K. B. 689, 3 B. W. C. C. 507; *Challis v. London, etc., R. Co.*, (1905) 2 K. B. 154.

<sup>51</sup>*Nisbet v. Rayne*, 3 B. W. C. C. 507.

<sup>52</sup>*Anderson v. Balfour*, 45 Ir. L. T. 168, 3 B. W. C. C. 588.

<sup>53</sup>*Challis v. London, etc., R. Co.*, (1905) 2 K. B. 154.

<sup>54</sup>*Murry v. Denholm*, (1911) 48 Scotch L. R. 896.

<sup>55</sup>*MacShane v. Harrison*, Liverpool County Court, March, 1912 (unreported).

<sup>56</sup>*Gibson v. Dunkerly*, 3 B. W. C. C. 345.

previously fit to do, then that was an injury which resulted from the accident, even though the accident would not have incapacitated him had he been otherwise sound.<sup>57</sup>

This principle was applied in a case where a miner in the course of his employment received an injury to his right eye which in the absence of an operation rendered the eye almost useless and the accident did not affect the left eye, but this eye was at the time of the accident, slightly affected by the miner's disease called nystagnus, which apparently got worse and rendered the miner unable to work at his former work. The miner was allowed compensation.<sup>58</sup>

So a workman has been held entitled to compensation where he was in a debilitated condition, by reason of which he caught chronic bronchitis more easily by reason of an accident.<sup>59</sup>

Said Cozens-Hardy, Master of the Rolls, "I also think that in considering causes of this kind it is quite legitimate and proper to consider whether an accident has not accelerated an existing tendency to disease in the body, or, as some people have said, given life to some latent causes of mischief in the body."<sup>60</sup>

It is, however, a question of fact whether the existing disease was accelerated by the accident.<sup>61</sup>

The same principle would apply in cases where a second operation is rendered necessary and the death

<sup>57</sup>*Lee v. Baird*, 45 Scotch L. R. 717, 1 B. W. C. C. 34; *Ward v. London, etc., R. Co.*, 3 W. C. C. 192. But see *Cory v. Hughes*, (1911) 2 K. B. 738, 4 B. W. C. C. 291.

<sup>58</sup>*Lee v. Baird*, 45 Scotch L. R. 717, 1 B. W. C. C. 34.

<sup>59</sup>*Ystradowen Colliery Co. v. Griffiths*, 100 L. T. 869, 2 B. W. C. C. 357.

<sup>60</sup>*Ystradowen Colliery Co. v. Griffiths*, 100 L. T. 869, 2 B. W. C. C. 357. See also *Dunham v. Clare*, (1902) 2 K. B. 292; *Brintons v. Turvey*, 21 T. L. R. 444.

<sup>61</sup>*Warnock v. Glasgow Iron, etc., Co.*, 6 F. 474.

of the employé results from the weakened condition of the employé due to the first operation.<sup>62</sup>

This would not be the case, however, where the second operation, like the pulling of an ulcerated tooth, is not connected with the injury caused by the accident.<sup>63</sup>

**§ 464. Defective medical treatment.**—An injured workman is not to be deprived of compensation in all cases where his condition is in some measure due to defective treatment.<sup>63a</sup>

Whether the condition of the workman is due to such defective treatment is usually a question of fact.<sup>63b</sup>

**§ 465. Extraterritorial effect of compensation laws.**—Compensation laws like other laws are without effect beyond the jurisdiction enacting the law. The English Compensation Law has no application outside the territorial limits of the United Kingdom, except in the cases of seamen and apprentices. Accordingly where an English workman in the employment of English contractors was sent out by them to Malta to work for them there, and met with a fatal accident, his widow was denied compensation under the 1906 Compensation act.<sup>64</sup>

In America, however, an action for the death of a workman may be brought in another state provided

<sup>62</sup>*Shirt v. Calico Printers' Association*, (1909) 2 K. B. 51, 2 B. W. C. C. 342. But see *Charles v. Walker*, 25 T. L. R. 609, 2 B. W. C. C. 5.

<sup>63</sup>*Charles v. Walker*, 25 T. L. R. 609, 2 B. W. C. C. 5.

<sup>63a</sup>*Beadle v. Milton*, 114 L. T. 550, 5 W. C. C. 55.

<sup>63b</sup>*Smith v. Cord Taton Colliery Co.*, 2 W. C. C. 121.

<sup>64</sup>*Tomalin v. Pearson*, (1909) 2 K. B. 61. See also *Hicks v. Maxton*, (1907) 124 L. T. Journal 135, 1 B. W. C. C. 150, where a woman servant was taken to France and while there sustained an injury, and was held not entitled to compensation.

See also *Hicks v. Maxton*, (1907) 124 L. E. Journal 135, 1 B. W. C. C. 150, where a woman servant was taken to France and while there sustained an injury and was held not entitled to compensation.

the laws of the two states on the subject are substantially similar.<sup>65</sup>

The Federal Employers' Liability law may be enforced in the state courts.<sup>66</sup>

**§ 466. Whether injury must be natural or proximate cause of accident.**—Where a workman receives a personal injury from an accident arising out of and in the course of his employment and death ensues the death may be the result of the injury within the meaning of the compensation laws, even though in fact it may not be the natural or probable consequence thereof.<sup>67</sup>

Thus where a workman receives a personal injury from an accident arising out of and in the course of his employment and disease ensues which incapacitates him for work, the incapacity may be the result of the injury even though it is not the natural result of the injury. The question to be determined is whether the incapacity is in fact the result of the injury.<sup>68</sup>

**§ 467. Wilful misconduct.**—The injured employé is denied all compensation, under the British Act where his injuries are the result of his own serious and wilful misconduct unless the injury results in death or serious and permanent disablement. The question whether misconduct in any case is serious within the meaning of the statute is determined by its nature and not by its consequences.<sup>69</sup>

Any neglect is "serious neglect" within the meaning of the act, which in the view of reasonable persons in a

<sup>65</sup> St. Louis, etc., R. Co. v. Haat, 71 Ark. 258, 72 S. W. 893; Burrell v. Fleming, 109 Fed. 489; Cincinnati, etc., R. Co. v. McMullen, 117 Ind. 439, 20 N. E. 287; Usher v. West Jersey R. Co., 126 Pa. St. 206, 17 Atl. 597, 4 L. R. A. 261; Howlan v. New York, etc., Tel. Co., 131 App. Div. (N. Y.) 443, 115 N. Y. S. 316.

<sup>66</sup> Mondon v. New York, etc., R. Co., 223 U. S. 1.

<sup>67</sup> Dunham v. Clare, (1902) 2 K. B. 292.

<sup>68</sup> Ystradowen Colliery Co. v. Griffiths, (1909) 2 K. B. 533.

<sup>69</sup> Johnson v. Marshall, 22 T. L. R. 565; Hill v. Granby Consolidated Mines, 12 B. C. 118, 1 B. W. C. C. 436.

position to judge, exposes anybody, including the person guilty of it, to the risk of serious injury, or if the injury to be feared is of such a character that it may be described as serious, then the case is within the language of the act.<sup>70</sup>

It is not enough that the act is shown to be negligent,<sup>71</sup> neither is the case always made by proof of a violation of rules intended for the safety of employés.<sup>72</sup>

This latter principle would apply in cases where an injury from the breach of the rule could not reasonably be anticipated.<sup>73</sup>

The violation of the rule may be shown as bearing on the question of serious misconduct. It is evidence on the question but no conclusive.<sup>74</sup>

The case of wilful misconduct would seem clear in cases where the employé is guilty of a deliberate and intentional disobedience of well understood and oft repeated orders intended for the protection of workmen.<sup>75</sup>

A test of a particular act as being an act of wilful misconduct is whether the employer would be justified in dismissing the disobedient employé without notice.<sup>76</sup>

As a general rule it is serious and wilful misconduct for an employé to meddle with unfamiliar machinery in violation of express orders to the contrary.<sup>77</sup>

<sup>70</sup> *Hill v. Granby Consolidated Mines*, 12 B. C. 118, 1 B. W. C. C. 436; see also *Leishman v. Dixon*, 47 Scotch L. R. 410, 3 B. W. C. C. 560 (obvious danger).

<sup>71</sup> *Rees v. Powell, etc., Coal Co.*, 4 W. C. C. 17; *Reeks v. Kynock*, 4 W. C. C. 14; 18 T. L. R. 34.

<sup>72</sup> *George v. Glasgow Coal Co.*, 99 L. T. 782, 2 B. W. C. C. 125. But see *Jones v. London & S. W. R. Co.*, 3 W. C. C. 46; *Watson v. Butterley Co.*, 5 W. C. C. 51.

<sup>73</sup> *Johnson v. Marshall*, 94 L. T. 828, 8 W. C. C. 10.

<sup>74</sup> *Bist v. London S. W. R. Co.*, 96 L. T. 750, 9 W. C. C. 19.

<sup>75</sup> *Donnachie v. United Collieries*, 47 Scotch L. R. 412; *Brooker v. Warren*, 23 T. L. R. 201, 9 W. C. C. 26; *John v. Albion Coal Co.*, 4 W. C. C. 15; *Jones v. London, etc., R. Co.*, 3 W. C. C. 46.

<sup>76</sup> *Johnson v. Marshall*, 94 L. T. 828, 8 W. C. C. 10.

<sup>77</sup> *Forster v. Pierson*, 8 W. C. C. 19.

Compensation may be granted in case of serious and permanent disablement resulting from serious and wilful misconduct. There was a case of this character where a boy in disobedience to orders was cleaning a machine in motion and his right hand was drawn into the machine and the top joint of two of his fingers were torn off. The court held that the injury was attributable to the serious and wilful misconduct of the workman but that it resulted in serious and permanent disablement and awarded compensation.<sup>78</sup>

Where however the injury is not such as would lead to serious and permanent disablement the right to compensation is forfeited.<sup>79</sup>

There was a case of serious and wilful misconduct defeating a claim for compensation where a servant girl in violation of express orders, stood on the ledge of a glass frame to hang out clothes in a garden and while so standing she slipped and broke one of her ribs.<sup>80</sup>

It is not ordinarily serious and wilful misconduct for a servant to use a way or path usually followed by employés, though a safer way is provided by the employer.<sup>81</sup>

There was a case of serious misconduct where a collier ordered to cut a road in the colliery left his work and went to cut coal in a part of the mine where it was forbidden by special rule to cut any and by doing so he undermined props and he was killed by a cavein.<sup>82</sup>

In this case it was observed by the Master of the Rolls: "If a workman is doing something outside the scope of his employment, the proof of serious and wilful

<sup>78</sup> Hopwood v. Olive, 3 B. W. C. C. 357.

<sup>79</sup> George v. Glasgow Coal Co., 45 Scotch L. R. 687, 1 B. W. C. C. 239.

<sup>80</sup> Beale v. Fox, 126 L. T. J. 257, 2 B. W. C. C. 467.

<sup>81</sup> Douglas v. United Mineral Mining Co., 2 W. C. C. 15.

<sup>82</sup> Weighill v. South Heaton Coal Co., 4 B. W. C. C. 141.

misconduct does not bring the accident within the scope of the employment.”<sup>83</sup>

The question whether the act resulting in the injury was wilful misconduct is a question of fact,<sup>84</sup> and the burden of the contention is on the employer.<sup>85</sup>

**§ 468.—Wilful misconduct—Intoxication.**—The case of wilful misconduct seems very clear in those cases where the employé goes to work while intoxicated and sustains injury by reason of such intoxication.<sup>86</sup>

**§ 469. Wilful misconduct—Misrepresentation as to age.**—The fact that a youth makes a misrepresentation as to his age in order to obtain the employment in which he received his injury will not be regarded as wilful misconduct where the injury is not a result of the misrepresentation.<sup>87</sup>

**§ 470. Dismissal of incapacitated person for his own misconduct.**—Generally speaking an incapacitated workman employed at adequate wages under agreement who loses his position by reason of his own misconduct is not entitled to at once call upon his employer for compensation but one act of misconduct does not necessarily deprive him forever of the rights of compensation.<sup>88</sup>

In one of the cases a workman was partially incapacitated by an accident and injury was permanent, but his employers found work in another capacity at higher wages than he had received before the accident. He

<sup>83</sup> *Weighill v. South Heaton Coal Co.*, 4 B. W. C. C. 141.

<sup>84</sup> *Donnachie v. United Collieries*, 47 Scotch L. R. 412.

<sup>85</sup> *Donnachie v. United Collieries*, 47 Scotch L. R. 412; *Grawick v. British Columbia Sugar Refinery Co.*, 15 B. C. 193, 4 B. W. C. C. 452; *Darbon v. Gigg*, 7 W. C. C. 32.

<sup>86</sup> *Bradley v. Salt Union*, 122 L. T. J. 302, 9 W. C. C. 31; *Burrell v. Avis*, 1 W. C. C. 129.

<sup>87</sup> *Darnley v. Canadian Pacific R. Co.*, 14 B. C. 15, 2 B. W. C. C. 505.

<sup>88</sup> *White v. Harris*, 4 B. W. C. C. 39.

was dismissed from this employment by reason of his own misconduct and commenced proceedings for compensation and the award was made in favor of his employers on the ground that his incapacity was due to his own misconduct. It was held that the workman though somewhat disabled had the capacity to earn the same wages as formerly and was only prevented from doing so through his own misconduct, and hence, he was not entitled to a substantial award.<sup>89</sup>

**§ 471. Suicide while insane.**—It is the holding of an English case that where a workman had become insane as the result of an accident and committed suicide that the widow should be allowed to show whether the act of suicide was the result of the accident.<sup>90</sup>

<sup>89</sup> *Hill v. Ocean Coal Co.*, 3 B. W. C. C. 29.

<sup>90</sup> *Malone v. Cayzer*, 45 Scotch L. R. 351, 1 B. W. C. C., 27.



## CHAPTER XXVIII.

### WHETHER SERVANT WAS IN THE COURSE OF HIS EMPLOYMENT AT THE TIME INJURIES WERE RECEIVED.

- | Sec.  | Sec.   |
|---|--|
| 472. Meaning of expression "accident arising out of and in the course of the employment." | 486. Going to and returning from work.   |
| 473. Injury to employé on way to or from pay office.                                      | 487. Suffocation while asleep on premises of master.   |
| 474. Acts outside line of employment.   | 488. Collector injured in course of employment.  |
| 475. Injury while doing forbidden acts.   | 489. Sailors and others leaving and returning to ship—Cases where accidents arise out of and in the course of employment.        |
| 476. Practical jokes.   | 490. Sailors and others leaving and returning to ship—Cases where accident did not arise out of and in the course of employment. |
| 477. Injury to an employé away from the master's premises.                                | 491. Injuries received on premises after discharge of servant.   |
| 478. Tetanus contracted by gardener.  | 492. Whether work "on, in or about" a railway.   |
| 479. Dismissed employé on premises to remove his tools.                                   | 493. Malicious injuries are not received in course of employment.  |
| 480. Temporary interruptions.   | 494. Retroactive effect of statutes.   |
| 481. Injury during lunch hour.  | 495. Burden of proof that accident arose out of and in the course of employment.   |
| 482. Fall from wagon while attempting to recover personalty dropped by employé.           |  |
| 483. Obedience of order which should not be obeyed.                                       |  |
| 484. Attempts to save life of fellow employé.   |  |
| 485. Acts in emergencies.   |  |

§ 472. Meaning of expression "accident arising out of and in the course of the employment."—"The person entitled to compensation under the act," says Buckley, L. J., "is a workman who in an employment suffers personal injury by 'accident arising out of and in the course of the

employment.' The words 'out of and in the course of employment' are used conjunctively, not disjunctively; and upon ordinary principles of construction are not to be read as meaning 'out of,' that is to say, 'in the course of.' The former words must mean something different from the latter words. The workman must satisfy both the one and the other. The words 'out of,' point, I think, to the origin or cause of the accident; the words 'in the course of' to the time, place, and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident. The latter words relate to the circumstances under which an accident of that character or quality takes place. The character or quality of the accident as conveyed by the words 'out of' involves, I think, the idea that the accident is in some sense due to the employment. It must be an accident resulting from a risk reasonably incident to the employment."<sup>1</sup>

**§ 473. Injury to employé on way to or from pay office.**—The cases are generally agreed that one does not lose his character as an employé when he leaves the place of his employment to collect his wages. Injuries received at this time are caused by accident arising out of and in the course of employment.<sup>2</sup>

Accidents to employés in the course of employment occur, says Lord Chancellor Loreborn, "while he is doing what a man so employed may reasonably do within a time during which he is employed and at a place where he may reasonably be during that time to do that thing."<sup>3</sup>

And the rule is broad enough to preserve to the employé his character as such where he goes to the pay window for his wages after his term of service is actually terminated.<sup>4</sup>

<sup>1</sup> *Fitzgerald v. Clark*, 99 L. T. 101, 1 B. W. C. C. 197.

<sup>2</sup> *Nelson v. Belfast Corporation*, 42 Irish L. T. 223; *Riley v. Holland*, 1 K. B. 1029, 104 L. T. 371; *Lowry v. Sheffield Co.*, 24 L. T. R. 142; *Moore v. Manchester Liners*, (1910) A. C. 498.

<sup>3</sup> *Moore v. Manchester Liners*, (1910) A. C. 498.

<sup>4</sup> *Riley v. Holland*, 1 K. B. 1029, 104 L. T. 371.

"It was admitted that it was part of the contract of employment that the company should pay this man at their pay office and that he should go there for his wages. While going to the pay office to get his wages he met with an accident on the company's premises. In these circumstances the court was asked to say that the accident did not arise in the course of his employment. In his Lordship's view it was just as much a part of his employment to go to the pay office on that day at that hour, as it was to go down the pit on the following Sunday night."<sup>5</sup>

**§ 474. Acts outside line of employment.**—Compensation may not be awarded where the injury is received at a time when the servant is doing an act clearly outside the scope of his employment and to accomplish a purpose of his own.<sup>6</sup>

On this ground compensation was refused where an engineman left his engine to return to the rightful owner a pay envelope given him by mistake and he was injured while performing this errand;<sup>7</sup> where a boy employed to piece broken ends of yarn, injured himself while cleaning machinery in motion and such boy was not employed to clean machinery;<sup>8</sup> where a domestic servant employed to take care of a small child, set her clothes on fire while drying her hair;<sup>9</sup> where an engineer left his engine when

<sup>5</sup> *Lowry v. Sheffield Coal Co.*, 24 L. T. R. 142.

<sup>6</sup> *Edwards v. International Coal Co.*, 5 W. C. C. 21; *Losh v. Evans*, 5 W. C. C. 17; *Smith v. Lancashire, etc., R. Co.*, (1899) 79 L. T. 633; *Williams v. Wigan Coal, etc., Co.*, 3 B. W. C. C. 65; *Murphy v. Berwick*, (1909) 43 Ir. L. T. 126, 2 B. W. C. C. 103; *Clifford v. Joy*, (1909) 43 Ir. L. T. 193, 2 B. W. C. C. 32; *Furniss v. Gartside*, 3 B. W. C. C. 411; *Bates v. Davies*, (1909) 2 B. W. C. C. 459; *Naylor v. Musgrave Spinning Co.*, 4 B. W. C. C. 286; *Cronin v. Silver*, (1911) 4 B. W. C. C. 221; *Read v. Great Western R. Co.*, (1908) 99 L. T. 781, 2 B. W. C. C. 109; *Morrison v. Clyde Nav. Co.*, (1908) 46 Scotch L. R. 38, 2 B. W. C. C. 99.

<sup>7</sup> *Williams v. Wigan Coal & Iron Co.*, 3 B. W. C. C. 65.

<sup>8</sup> *Naylor v. Musgrave Spinning Co.*, 4 B. W. C. C. 286.

<sup>9</sup> *Clifford v. Joy*, (1909), 43 Ir. L. T. 193, 2 B. W. C. C. 32.

it was standing at rest and crossed over to another track to communicate with a fireman of another engine on business of his own and while returning to his engine was knocked down by a truck and killed.<sup>10</sup>

But the principle has been held inapplicable to a case where employes changed positions with each other with the knowledge of the foreman in charge of the work and one of them sustained injuries in the operation of the new machinery on which he commenced work.<sup>11</sup>

**§ 475. Injury while doing forbidden acts.**—The cases are generally agreed that a workman who sustains an injury while doing an expressly forbidden act is not entitled to compensation, for the reason that the act causing his injury did not arise out of and in the course of his employment.<sup>12</sup>

Thus the rule was applied and compensation denied in a case where a collier used a method of transit to reach his place of work which method was expressly forbidden and fines were inflicted for his disobedience, and while using this method of transit, he sustained a fatal injury.<sup>13</sup>

So, in a case where a workman in a powerhouse dusted a switchboard when it was no part of his duty and he was expressly forbidden to do so, and while doing so he fell against a live gear and sustained injuries.<sup>14</sup>

And the rule finds frequent application in cases where

<sup>10</sup> *Reed v. Great Western Railroad Co.*, (1908) 99 L. T. 781, 2 B. W. C. C. 109.

<sup>11</sup> *Cambrook v. George*, 5 W. C. C. 26.

<sup>12</sup> *McDaid v. Steel*, 48 Scottish L. R. 765, 4 B. W. C. C. 412; *Jenkinson v. Harrison*, 4 B. W. C. C. 194; *Traynor v. Addie*, 48 Scottish L. R. 820, 4 B. W. C. C. 357; *Kerr v. Baird*, 48 Scottish L. R. 646, 4 B. W. C. C. 397; *Barnes v. Nunnery Colliery Co.*, 4 B. W. C. C. 43; *Lowe v. Pearson*, (1899) 79 L. T. 654; *Kane v. Merry*, 48 Scotch L. R. 430, 4 B. W. C. C. 379; *Whitehead v. Reader*, (1901) 2 K. B. 48, 3 W. C. C. 40.

<sup>13</sup> *Barnes v. Nunnery Colliery Co.*, 4 B. W. C. C. 43; see also *Kane v. Merry*, 48 Scotch L. R. 430, 4 B. W. C. C. 379.

<sup>14</sup> *Jenkinson v. Harrison*, 4 B. W. C. C. 194.

miners violate rules relating to the positions during blasting operations.<sup>15</sup>

But, the rule must be understood with some qualifications. "I agree," says Collins, L. J., "in what has already been pointed out, that it is not every breach of a master's orders that would have the effect of terminating the servant's employment, so as to excuse the master from the consequences of the breach of his orders. We have to get back to the orders emanating from the master to see what his sphere of employment of the workman, and it must be competent to the master to limit that sphere. If the servant acting within the sphere of his employment violated the order of his master, the latter is responsible. It is, however, obvious that a workman can not travel out of a sphere of his employment without the order of his employer to do so; and if he does travel out of the sphere of his employment without such an order, his acts do not make the master liable either to the workman under the workman's compensation act 1897, or to third persons in common law."<sup>16</sup>

Accordingly, there are cases which authorize allowance of compensation where a workman violates rules by going into forbidden places to get tools or to examine the working of machinery where matters go wrong.<sup>17</sup>

§ 476. **Practical jokes.**—Injuries the result of a spirit of playfulness on the part of the injured servant or his fellows are generally held not received in the course of employment.<sup>18</sup>

<sup>15</sup> *Traynor v. Addie*, 48 Scottish L. R. 820, 4 B. W. C. C. 357.

<sup>16</sup> *Whitehead v. Reader*, (1901) 2 K. B. 48, 3 W. C. C. 40.

<sup>17</sup> *Conway v. Pumpherston Oil Co.*, 48 Scottish L. R. 632, 4 B. W. C. C. 392; *Harding v. Brynddu Colliery Co.*, (1911) 2 K. B. 747, 4 B. W. C. C. 269.

<sup>18</sup> *Furniss v. Gartside*, 3 B. W. C. C. 411; *Cole v. Evans*, 4 B. W. C. C. 138; *Fitzgerald v. Clark*, (1908) 99 L. T. 101, 1 B. W. C. C. 197; *Wilson v. Laing*, (1909) 46 Scotch, L. R. 843, 2 B. W. C. C. 118; *Mullen v. Stewart*, (1908) 45 Scotch L. R. 729, 1 B. W. C. C. 204; *Shaw v. Wigan Coal, etc., Co.*, 3 B. W. C. C. 81.

This was the case, where some workmen as a practical joke put the hook of the employer's crane on which they were working, through the neckcloth of a fellow workman who was at the time engaged in his work for his employer and commenced to draw him up through the warehouse. The man held the chains with his hands as long as he could, but eventually had to let go and he fell a considerable distance and was seriously injured.<sup>19</sup>

So compensation was denied on this ground where a domestic servant while engaged in the performance of her duty, was struck on the eye by a ball playfully thrown at her by a fellow servant, with the result that she almost completely lost the sight of her eye.<sup>20</sup>

And so where a boy set to clean a machine at rest, was larking with another boy, and accidentally started the machinery, thereby injuring himself, it was held that the accident did not arise out of his employment;<sup>21</sup> in another of the cases, a workman for no apparent reason deliberately assaulted a fellow workman, who, in trying to prevent himself from falling over a moving rope, swung up his hand in which was held a hammer, and injured the other workman's eye. It was held that this accident did not arise out of or in the course of the workman's employment.<sup>22</sup>

**§ 477. Injury to an employé away from the master's premises.**—It is not required that the servant shall receive his injuries on the premises of his master. It is sufficient if the injury is received in the course of his employment. It has been expressly held under the English compensation act of 1900, that it was not necessary that the employment of an agricultural laborer at the time of the accident, in respect of which, compensation is sought,

<sup>19</sup> *Fitzgerald v. Clark*, 1 B. W. C. C. 197, (1908) 99 L. T. 101.

<sup>20</sup> *Wilson v. Laing*, 46 Scotch L. R. 843, 2 B. W. C. C. 118.

<sup>21</sup> *Cole v. Evans*, 4 B. W. C. C. 138; see also *Furniss v. Gartside*, 3 B. W. C. C. 411.

<sup>22</sup> *Shaw v. Wigan Coal, etc., Co.*, 3 B. W. C. C. 81.

should have been "on or in or about" the land of his employer.<sup>23</sup>

**§ 478. Tetanus contracted by gardener.**—In an Irish case the evidence showed that a gardener while digging in his employer's garden was injured by a nail piercing his foot through his boot and he subsequently contracted and died of tetanus through the germ, which causes that disease, passing into the wound in his foot. It was found that persons working in stables and gardens are peculiarly subject to contract this disease, if suffering from any wound, and that the tetanus germ entered the wound while the gardener was at his work. It was held that the gardener met his death by an accident arising out of and in the course of his employment within the meaning of the act.<sup>24</sup>

**§ 479. Dismissed employé on premises to remove his tools.**—In what seems an extreme case, an English county court has held that a workman was in the course of his employment, where a few days after leaving his work he obtained leave to go down into the mine to bring up his tools and while there for that purpose met with an accident. The county judge made this finding in a considered judgment and the Court of Appeals refused to modify it on the ground that the court had no jurisdiction to interfere with the finding of fact.<sup>25</sup>

**§ 480. Temporary interruptions.**—The employé still retains his character as such employé in the case of necessary interruptions of his work as where, for example, he leaves his work to obey a call of nature,<sup>26</sup> and is entitled to compensation for injury received provided this act is performed at a proper place.<sup>27</sup>

<sup>23</sup> *Smithers v. Wallis*, (1903 1 K. B. 200.

<sup>24</sup> *Walker v. Mullins*, (1908) 42 Ir. L. T. 168, 1 B. W. C. C. 211.

<sup>25</sup> *Molloy v. South Wales, etc., Colliery Co.*, 4 B. W. C. C. 65.

<sup>26</sup> *Elliott v. Rex*, 6 W. C. C. 27.

<sup>27</sup> *Thomson v. Flemington Coal Co.*, 48 Scotch L. R. 740, 4 B.

But the right to compensation is lost where the servant leaves his work for a purpose of his own and while absent sustains injury.<sup>28</sup>

Thus, where a club servant left the club for his own purpose and was injured while climbing through a window on his return, it was held that the accident did not arise out of and in the course of the employment.<sup>29</sup>

In another case, a workman employed by colliery owners, went home to dinner in the middle of the day by the accustomed and permitted route, which was on the land of his employers, being overtaken by a line of trains conveying rubbish to a tip, he attempted to jump on one of the trains and fell and was run over and killed. This act was a violation of a colliery regulation. This was held an accident not arising out of and in the course of employment.<sup>30</sup>

The going from one place to another in the line of the servant's work does not amount to an interruption. "If a man goes from his working place to another place in the works he must get back to his work, and if in going back he meets with an accident, that is an accident arising in the course of his employment, just as in the case of an accident happening after he has entered the works in the morning and while he is proceeding to his own place in the works."<sup>31</sup>

**§ 481. Injury during lunch hour.**—"A workman's employment is not confined to the actual work upon which he is engaged but extends to those actions which by the terms of his employment he is entitled to take or where

W. C. C. 406; see also *Pearce v. London, etc., R. Co.*, 2 W. C. C. 152 (overruled).

<sup>28</sup> *Bevon v. Lancashire, etc., R. Co.*, 89 L. T. 715, 6 W. C. C. 20.

<sup>29</sup> *Watson v. Sherwood*, 127 L. T. J. 86, 2 B. W. C. C. 462.

<sup>30</sup> *Pope v. Hill's Plymouth Co.*, 3 B. W. C. C. 339; see also, *Brice v. Lloyd*, (1909) 2 K. B. 804, 2 B. W. C. C. 26.

<sup>31</sup> *Thomson v. Flemington Coal Co.*, 48 Scotch L. R. 740, 4 B. W. C. C. 406.



by the terms of his employment he is taking his meals on the employer's premises."<sup>32</sup>

In other words a workman does not lose his character as a workman while eating his lunch on his employer's premises at a place where he may safely do so and not at an expressly forbidden place or a place of obvious danger.<sup>33</sup>

But this rule would not apply to cases where the employé leaves the premises of his employer to eat his lunch during the time set apart for this purpose.<sup>34</sup>

The rule stated in the outset has been applied in a case where a workman took his lunch to a place on his employer's premises where he had no right to be and if found at the place would have been dismissed, and sustained a serious injury by falling into a tank of scalding water. His injuries were held not to have arisen out of his employment.<sup>35</sup>

**§ 482. Fall from wagon while attempting to recover personalty dropped by employé.**—The rule that an employé is injured in the course of his employment where the accident occurs while he is doing something that a man so employed can reasonably do at the time during which he is employed and where he may reasonably be during that time to do that thing, was applied in the case of a workman who sustained injury by falling from a wagon while attempting to regain his pipe which had fallen from his mouth. Compensation was awarded. Said the court: "Now this man's operation of getting down from the wagon to recover his pipe seems to me to satisfy all those conditions. Taking them in their inverse order, he had a

<sup>32</sup> *Brice v. Lloyd*, 2 B. W. C. C. 26.

<sup>33</sup> *Brice v. Lloyd* (1909) 2 K. B. 804, 2 B. W. C. C. 26; *Blovelt v. Sawyer*, (1904) 1 K. B. 271, 6 W. C. C. 16; *Earnshaw v. Lancashire, etc., R. Co.*, 5 W. C. C. 28; *Morris v. Lambeth Borough Council*, 8 W. C. C. 1; *Rowland v. Wright*, 24 T. L. R. 852, 1 B. W. C. C. 192.

<sup>34</sup> *McKrill v. Howard*, 2 B. W. C. C. 460.

<sup>35</sup> *Brice v. Lloyd*, (1909) 2 K. B. 804, 2 B. W. C. C. 26.

right to be at the place, riding on or walking beside the wagons; he was within the time during which he was employed, because the accident happened during the actual period of transit; and he was doing a thing which a man while working may reasonably do—a workman of his sort may reasonably smoke, he may reasonably drop his pipe, and he may reasonably pick it up again.”<sup>36</sup>

**§ 483. Obedience of order which should not be obeyed.**—Some latitude is allowed an employé ordered to do an act by a superior though the order is one that the employé should not obey. An accident that occurs while a man is obeying an order which though he knows or ought to know he need not obey, because it is against the rules, but is given him by one from whom he receives his orders, may nevertheless be an accident arising out of and in the course of his employment.<sup>37</sup>

In a case where a boy of 13 whose duty it was to do all sorts of things under the direction of a foreman, was untruthfully told by another man that the foreman had said he was to do certain work and the boy did it and sustained an injury, he was held to have been working in the due course of his employment.<sup>38</sup>

**§ 484. Attempts to save life of fellow employé.**—It is believed that the humane principle will govern in cases of injuries received while the employé is attempting to save the life of a fellow employé endangered in the course of work and that compensation will be awarded to one so injured. The attempt to save life may be justified on the ground that the employer would have wished the employé to act as he did.<sup>39</sup>

**§ 485. Acts in emergencies.**—As a general rule the law will assume that an employé has the right to act in an

<sup>36</sup> *McLaughlan v. Anderson*, 48 Sc. L. R. 349, 4 B. W. C. C. 376.

<sup>37</sup> *Statham v. Galloways*, 109 L. T. 133, 2 W. C. C. 149.

<sup>38</sup> *Brown v. Scott*, 1 W. C. C. 11.

<sup>39</sup> *Matthews v. Bedworth*, 1 W. C. C. 124.

emergency where the interests of his master are involved. This was the rule where a servant was injured while attempting to check a runaway horse belonging to his master, and this, though the employé at the time was at a place where he was expressly forbidden to be.<sup>40</sup>

But there must be an emergency. There was not an accident arising from an emergency where a boy was employed to grease the wheel and axles of railroad trucks, and while waiting for the trucks to come up he thought the points were against the engine and began to pull the lever in order to open them and was injured.<sup>41</sup>

So a man employed by the owner of a canal boat as driver, who was forbidden by his employer to take part in the steering or management of the boat was drowned while engaged in steering. A boatman who had been temporarily in charge of a horse had deserted a short time before the accident and the other boatman who was also master of the boat decided to drive and told the deceased to steer. It was held that no emergency had arisen and that the deceased had violated the express order of his employer and hence the accident did not arise out of and in the course of the employment.<sup>42</sup>

There was a case of emergency where a workman was employed by a lion tamer to look after the baggage, clean out the cages and make himself useful, but he was not required to feed the lions. On one occasion the lions got out of a cage and in the attempt to drive the lions back they turned on the employé and killed him. In this case compensation was awarded on the theory that the employé was injured while acting in an emergency in the interests of his employer.<sup>43</sup>

**§ 486. Going to and returning from work.**—A workman's employment begins in the ordinary course when

<sup>40</sup> *Rees v. Thomas*, 80 L. T. 578, 1 W. C. C. 9.

<sup>41</sup> *Harrison v. Whittaker*, 16 T. L. R. 108, 1 W. C. C. 12.

<sup>42</sup> *Whelan v. Moore*, 43 Ir. L. T. 205, 2 B. W. C. C. 114.

<sup>43</sup> *Hapelman v. Poole*, 25 T. L. R. 155, 2 B. W. C. C. 48.

the time has arrived and the locality has been reached at which he is employed to work.<sup>44</sup>

But the employment is not limited to the exact moment when the workman reaches the place where he is to begin his work and to the moment when he ceases that work. It includes a reasonable amount of time and space before and after ceasing actual employment.<sup>45</sup>

On the question of time when employment commences within the compensation acts it has been said: "There must be a reasonable margin of space having regard to all the circumstances. It is not a sufficient test that the workman should be on the premises of the employer; but it may be sufficient that he is in such a state of proximity as may be treated as a reasonable margin in point of space. It is impossible to lay down any definite limit as the circumstances of each case must necessarily differ."<sup>46</sup>

"But there is no doubt that only a reasonable margin before the time of commencing actual work can be considered as coming within the period of employment."<sup>47</sup>

The rule is the same as to the time after actual employment is terminated and the relation will exist for a reasonable interval after actual work has ceased.<sup>48</sup>

As a general rule, however, the period of going to and returning from work is not included.<sup>49</sup>

Accordingly where a workman, when his work for the

<sup>44</sup> *Holness v. Mackay*, 80 L. T. 831, 1 B. W. C. C. 13.

<sup>45</sup> *Gane v. Norton Hill Colliery Co.*, 2 B. W. C. C. 42; *McKee v. Great Northern R. Co.*, 42 Ir. L. T. 132, 1 B. W. C. C. 165.

<sup>46</sup> *Hoskins v. Lancaster*, 3 B. W. C. C. 476.

<sup>47</sup> *Sharp v. Johnson*, (1905) 2 K. B. 139, 7 W. C. C. 28.

<sup>48</sup> *Smith v. South Normanton Colliery Co.*, (1903) 1 K. B. 204, 5 W. C. C. 14.

<sup>49</sup> *Gilmour v. Dorman*, 105 L. T. 54, 4 B. W. C. C. 279; *Benson v. Lancashire, etc., R. Co.*, (1904) 1 K. B. 242; *Holmes v. Mackay*, 80 L. T. 831, 1 W. C. C. 13; *Jackson v. General Steam Fishing Co.*, (1909) A. C. 523, 2 B. W. C. C. 56; *Caton v. Summerlee, etc., Iron Co.*, (1902) 39 Scotch L. R. 762; *Walters v. Stavely Coal, etc., Co.*, 105 L. T. 109, 4 B. W. C. C. 303; *Whitbread v. Arnold*, (1908) 99 L. T. 103, 1 B. W. C. C. 317.

day was over without loitering and with all reasonable speed left the place where he was employed by the accustomed and permitted route on the way to his home and was injured by an accident while so doing, the accident was held to have arisen in the course of his employment as well as out of it within the meaning of the English compensation law.<sup>50</sup>

Another rule is that the servant will be regarded as employed during a reasonable time before the actual employment commences.<sup>51</sup>

But this intends a reasonable time and an hour and a quarter before the time to commence work is too long.<sup>52</sup>

So one is in the course of his employment where he is directed by his superior to proceed to another place to work so that he is entitled to compensation where injured in going to the other place.<sup>53</sup>

A miner's employment commences when he has obtained his pit lamp and his "tallies" and is waiting at the pit brow to descend.<sup>54</sup>

In cases where the employer contracts to carry the servant to and from his work, the employment within the compensation statutes is generally held to begin when the workman enters the train to go to the place of work.<sup>55</sup>

<sup>50</sup> *Gane v. Norton Hill Colliery Co.*, 100 L. T. 979, 2 B. W. C. C. 42.

<sup>51</sup> *Sharp v. Johnson*, 92 L. T. 675; but see *Anderson v. Fife Coal Co.*, 47 Scotch L. R. 5, 3 B. W. C. C. 539.

<sup>52</sup> *Benson v. Lancashire, etc., R. Co.*, 89 L. T. 715, 6 W. C. C. 20.

<sup>53</sup> *Jesson v. Bath*, 113 L. T. 206, 4 W. C. C. 9.

<sup>54</sup> *Fitzpatrick v. Hindley Field Colliery Co.*, 3 W. C. C. 37, 4 W. C. C. 7.

<sup>55</sup> *Holmes v. Great Northern R. Co.*, (1900) 2 Q. B. 409, 2 W. C. C. 19; *Cremins v. Guest*, (1908) 1 K. B. 469, 1 B. W. C. C. 160.

But see *Davies v. Rhymney Iron Co.*, 2 W. C. C. 22; and *Nolan v. Porter*, 2 B. W. C. C. 106, where rule held inapplicable to cases where transportation gratuitous and not obligatory. But there is a case which holds that the time of employment begins while the workman is waiting on the platform for his train. *Cremins v. Guest*, (1908) 1 K. B. 469, 1 B. W. C. C. 160.

Closely connected with this subject are cases where the servant is engaged in two employments and injury is received while going from one employment to the other. This was the case where a workman was engaged to load a van and was promised employment in unloading it at another place, if he would be there by the time the van arrived. He agreed to be there, and started on his bicycle, but on the way met with an accident. In the lower court it was held that the employment was continuous and compensation was awarded. On appeal, however, the court took the view that there were two separate and distinct employments and that one had ended and the other had not begun, hence the accident did not arise out of or in the course of the employment.<sup>56</sup>

Very closely allied to the question under consideration are cases where the injury is received during working hours, while the employé is absent from his place of employment, on an errand connected with such employment. The general rule is that the employé still retains his character as an employé. Thus, for example, a laborer on the public roads was required to go for his pay to a station some distance from the place of his work. He was paid for the time occupied in going to and returning from the pay place. When returning to his work after receiving his wages he mounted a tram car, but finding that it did not travel to the place where his work was situate he got off and was struck by a passing cart and was injured. The Court of Appeals held this an injury arising out of and in the course of the laborer's employment.<sup>57</sup>

In another case a laborer at work in a field was stopped by a storm and while going to his home across the land of his employer to avoid the storm, he stepped on a plank

<sup>56</sup> *Perry v. Anglo-American Decorating Co.*, 3 B. W. C. C. 310.

<sup>57</sup> *Nelson v. Belfast Corporation*, 42 Ir. L. T. 223, 1 B. W. C. C. 158.

and sustained an injury. It was held that he was at the time in the course of his employment.<sup>58</sup>

The foregoing principles have found frequent application in cases of injuries to miners. Thus, for example, a miner who was making his way home from the pit, instead of taking the recognized exit provided by the miners for the use of the men, crossed the gangway onto a dirt-bed or waste heap, down which he proceeded by a steep and very rough and in wet weather very slippery walk not formed in any way but worn down into uneven steps, near the foot of a slope, and while standing on the premises of his employer he slipped and fell and was seriously injured. The use of this road was neither sanctioned nor expressly prohibited by the mine owners and as the deceased must have known, considered dangerous. It was held that the accident did not arise out of and in the course of the employment of the miners.<sup>59</sup>

In another case a collier was injured by a gate swinging back on him. The land on both sides of the gate belonged to the employer and the gates were about fifteen yards from the lamp room to which the collier was first going on his way to work. The passage through the gate was the reasonable mode of access to the collier's work. Here the accident was held to have arisen out of or in the course of the employment.<sup>60</sup>

In another case a miner descended into his pit by the cage and got out at the wrong level. He then descended by a shaft near the cage and instead of proceeding to his work walked to a place some 700 feet along the road to a place which was very different to his proper road. At this point he was found dead, having been scalded to death by the steam which escaped from the colliery engines.

<sup>58</sup> *Taylor v. Jones*, 123 L. T. J. 553, 1 B. W. C. C. 3.

<sup>59</sup> *Hendry v. United Collieries*, 47 Scotch L. R. 635, 3 B. W. C. C. 567.

<sup>60</sup> *Hoskins v. Lancaster*, 3 B. W. C. C. 476.

This accident was held to have arisen out of and in the course of employment of the collier.<sup>61</sup>

**§ 487. Suffocation while asleep on premises of master.**—A servant sustains an accident in the course of his employment where he is suffocated by smoke fumes while asleep in an apartment assigned to him by his master. This was the rule in a case where a servant girl was suffocated while asleep in her bedroom in a hotel in which she was employed.<sup>62</sup>

**§ 488. Collector injured in course of employment.**—A collector injured while going from house to house in the performance of his duty is entitled to compensation.<sup>63</sup>

This was the case where a salesman and collector while riding in the street on a bicycle in the course of his employment was kicked on the knee by a passing horse and injured.<sup>64</sup>

In another case a canvasser and collector employed to go around calling on customers usually went on his bicycle. This was not necessary and his employer who knew of the practice neither ordered nor forbade it. While so riding he collided with a street car and was killed. It was held that the accident arose out of the employment.<sup>65</sup>

It would seem on principle and in the light of the foregoing citations that a commercial traveler would be regarded as acting within the scope of his employment during all the time between the time he starts from his place of business and his return thereto.

<sup>61</sup> *Sneddon v. Greenfield Coal, etc., Co.*, 47 Scotch L. R. 337, 3 B. W. C. C. 557.

<sup>62</sup> *Chitty v. Nelson*, 126 L. T. J. 172, 2 B. W. C. C. 496.

<sup>63</sup> *Refuge Assurance Co. v. Miller*, 49 Scotch L. R. 67; *Pierce v. Provident Clothing, etc., Co.*, 104 L. T. 473, 4 B. W. C. C. 242; *McNeice v. Singer Sewing Machine Co.*, 48 Scotch L. R. 15, 4 B. W. C. C. 351.

<sup>64</sup> *McNeice v. Singer Sewing Machine Co.*, 48 Scotch L. R. 15, 4 B. W. C. C. 351.

<sup>65</sup> *Pierce v. Provident Clothing and Supply Co.*, 104 L. T. 473, 4 B. W. C. C. 242.



§ 489. Sailors and others leaving and returning to ship—Cases where accidents arise out of and in the course of employment.—There is a long line of cases bearing on the question of accidents to sailors received while leaving and returning to their vessels. It may be said in the outset that when a ship is in port and a sailor goes on shore with leave, his employment is not interrupted thereby.<sup>66</sup>

The sailor was held to have received his injuries in an accident arising out of and in the course of his employment where returning late in the evening to his ship after being on shore with permission, and being under the influence of liquor, he attempted to board the ship by using the cargo skid instead of the gangway and slipped and received injuries, from the effects of which he died. Sailors on this vessel were not forbidden to use the skid and it was habitually used for this purpose.<sup>67</sup>

The conclusion was the same in a case where a workman on a ship in dock attempted to reach shore by slipping down a rope which still held the vessel to a quay after the gangway had been removed and while making the attempt the rope gave way and he was thrown against the quay wall and injured. In this case it appeared that the injured workman was following the example of another workman who had got ashore safely by this means.<sup>68</sup>

Similarly, in another case a workman employed to watch trawlers as they lay in the harbor went ashore to get necessary food and on his return to his vessel fell from a ladder attached to the quay and sustained serious injury.<sup>69</sup>

In another case a sailor on shore with leave for purposes of his own was injured by the fall of the gangway

<sup>66</sup> *Leach v. Oakley*, 1 K. B. 523, (1911) 4 B. W. C. C. 93.

<sup>67</sup> *Robertson v. Allen*, (1908) 98 L. T. 821, 1 B. W. C. C. 172.

<sup>68</sup> *Keyser v. Burdick*, 4 B. W. C. C. 87.

<sup>69</sup> *Jackson v. General Steam Fishing Co.*, 25 T. L. R. 787, 2 B. W. C. C. 56.

and it was held that this accident arose out of and in the course of the employment of the sailor.<sup>70</sup>

In this case the court said: "The first question in all cases of this sort is, what is the workman's employment? It may be continuous, as that of a sailor on a voyage, or a domestic servant, in either of which cases, unless and until the continuity is broken or suspended, any accident necessarily arises in the course of the employment, or it may be discontinuous, in which case the nature of the express employment and the incidents that are reasonably necessary or proper for the due performance thereof have to be taken into consideration. This consideration also arises when a continuous employment is temporarily discontinued, either with or without leave."<sup>71</sup>

In another case, the accident was received in course of employment where a returning sailor passed over a gangway from the wharf and had one foot on the rail of the ship and the other on a ladder leading from the rail to the deck when it overbalanced and he fell over the side of the ship and was drowned.<sup>72</sup>

In still another case the injury was held one in the course of employment where a sailor off duty on returning to his vessel found no gangway nor ladder. After hailing and getting no answer he jumped from the pier to the vessel with the result that he struck the rail and sustained permanent injuries.<sup>73</sup>

A workman was descending the side of a ship by a rope ladder. The ladder twisted suddenly and he gave a cry and fell into the water and was dead when picked up. The medical evidence was that the death was due to heart failure and not to drowning, that the heart was in such a state, that any exertion might cause failure. This was held

<sup>70</sup> Leach v. Oakley, 4 B. W. C. C. 93.

<sup>71</sup> Leach v. Oakley, 4 B. W. C. C. 93, (1911) 1 K. B. 523.

<sup>72</sup> Canavan v. The Universal, 3 B. W. C. C. 355.

<sup>73</sup> Kearon v. Kearon, 45 Ir. L. T. 96, 4 B. W. C. C. 435.

an accident arising out of and in the course of the employment.<sup>74</sup>

§ 490. **Sailors and others leaving and returning to ship—Cases where accident did not arise out of and in the course of employment.**—It is the purport of other decisions that when a sailor goes on shore for his own purposes and not for the ship's business he is outside the protection of the compensation act from the moment he leaves the ship until he gets back on the ship. Where the sailor has been out for his own purposes whether with or without consent, his right to protection is complete when once he has got back on board the vessel.<sup>75</sup>

The question in most cases is as to the time when the employé relation is restored. "A sailor who goes on shore on a spree, whether with or without leave, while away from the ship, is out for his own amusement and is not in the employment of his master; his master may allow him to leave his work to go for a spree, but he can not be said to employ him to go on a spree, and when the sailor returns the question arises: at what point does he reach the ambit of his employment? It is immaterial whether he goes with or without leave; it is not a question of misconduct at all; it is whether he was in the course of duty or in the course of leading to it."<sup>76</sup>

The engineer of a vessel in drydock who went ashore to his home for dinner and fell into the dry dock on his return, was not in the course of his employment at the time of receiving the injury.<sup>77</sup>

The rule was the same where a workman went ashore in the night-time to buy bread and was told by the foreman not to go and he could have made the trip at an earlier hour with safety and upon his return, while at-

<sup>74</sup> *Trodden v. McLenard*, 4 B. W. C. C. 190.

<sup>75</sup> *Moore v. Manchester Liners*, 100 L. T. 164, 2 B. W. C. C. 87; *Kelly v. The "Foam Queen"*, 3 B. W. C. C. 113.

<sup>76</sup> *Leach v. Oakley*, 4 B. W. C. C. 93.

<sup>77</sup> *Gilbert v. The Nizam*, 3 B. W. C. C. 455.

tempting to jump from the quay onto the ship, he fell and was killed.<sup>78</sup>

In another case a sailor returning on board his ship after a trip on shore unconnected with his employment, fell into the water from steps leading from the gangway, of which they formed a part, and was drowned. This was held not an accident arising out of and in the course of the employment.<sup>79</sup>

In another case a workman arriving at a dock mistook the position of the gangway and fell between the dock wall and the ship and was injured. His day's pay should have begun from the time he reported himself on board the ship. Neither the dock, ship nor gangway were under the control of the employer. This was held an accident not arising out of and in the course of the workman's employment.<sup>80</sup>

"By going on shore with leave, the seaman does not interrupt the course of his employment, but any accident that occurs during the period of his being on shore is generally, if not necessarily, due to a danger to which he is exposed as a member of the public and not as one of the crew of the ship, and therefore is one which does not arise out of his employment. But if, whether in his working hours or leisure, it becomes necessary for him, in fulfillment of his employment, to get on board his vessel, an accident occurring in his doing so, is normally an accident arising out of his employment, because it is due to a danger incidental to his service in that ship."<sup>81</sup>

Here, as elsewhere, the applicant has the burden of proof that the accident arose out of and in the course of the employment and unless he sustains this burden, compensation will not be awarded.<sup>82</sup>

<sup>78</sup> *Martin v. Fullerton*, 1 B. W. C. C. 168.

<sup>79</sup> *Hindman v. Craig*, 44 Ir. L. T. 11, 4 B. W. C. C. 438.

<sup>80</sup> *Nolan v. Porter*, 2 B. W. C. C. 106.

<sup>81</sup> *Leach v. Oakley*, 4 B. W. C. C. 93.

<sup>82</sup> *Kitchenham v. The "Johannesburg,"* 4 B. W. C. C. 91, 311; *O'Brien v. Star Line*, 1 B. W. C. C. 177.

Compensation will not be awarded where the evidence is equally consistent with the sailor having gone ashore for his own purpose or for purposes connected with his duties.<sup>83</sup>

**§ 491. Injuries received on premises after discharge of servant.**—After the dismissal of a servant he is entitled to a reasonable time to leave the premises before he can be said to have lost his character as an employé. The length of the time necessary for this time is usually regarded as a question of fact. In one of the cases a miner employed in a colliery was suspended from work and ordered to go to the pit bottom to be taken above. Knowing that he could not be taken from the pit for some time he did not go to the pit bottom but went and sat in a “pass-by,” a kind of refuge by the side of the gangway, and while loitering there was injured by a falling piece of coal. This was held to be an accident not arising out of and in the course of employment.<sup>84</sup>

In this case the court, in addressing itself particularly to this matter, said: “While a workman is leaving the place where he is employed, I think that for the purposes of this act, his employment would still continue. But though his employment may continue for an interval after he has actually ceased working, yet there must come a time when he can no longer be said to be engaged in his employment in such a way that an accident happening to him can be said to have arisen out of and in the course of his employment. There must be a line beyond which the liability of the employer can not continue, and the question where that line is to be drawn in each case is a question of fact.”

<sup>83</sup> *Fletcher v. The “Duchess,”* 4 B. W. C. C. 317; *McDonald v. The Banana*, 1 B. W. C. C. 185.

<sup>84</sup> *Smith v. South Normanton Colliery Co.*, 88 L. T. 5, 1 K. B. 204 (1903).

**§ 492. Whether work "on, in or about" a railway.—**The courts incline to a close construction of this phrase in the law of 1897. In one of the cases, a barmaid in the employment of a railway company behind the counter of the refreshment room at a railway station was personally injured by an accident in the course of her employment and she was denied compensation on the ground that she was not employed "on or in or about a railway" within the English compensation act 1897. A refreshment room is not used for the purpose of public traffic within the meaning of the law.<sup>85</sup>

Neither is an employé of contractors to build a railway station included in the term, as this work is merely ancillary or incidental to the operation of the railroad.<sup>86</sup>

**§ 493. Malicious injuries are not received in course of employment.—**In a case where a missile was thrown in anger at a tormenting fellow employé and missed its mark and struck another employé properly engaged at his work, and seriously injured him, it was held that the accident did not arise out of the employment and the injured workman was not entitled to compensation. The act causing the injury was entirely outside the scope of the employment of both the doer of the act and the injured workman.<sup>87</sup>

**§ 494. Retroactive effect of statutes.—**In the absence of language in the statutes to the contrary, a compensation act has no retroactive effect. This was determined in an English case where a stereotyper in the employ of a newspaper was poisoned by the lead and left his employment before the compensation law became effective and died when the law was in full force. In this case compensation was refused on the ground that the injury was received before the enactment of

<sup>85</sup> *Milner v. Great Northern R. Co.*, 16 T. L. 249, 2 W. C. C. 51.

<sup>86</sup> *Pearce v. London, etc., R. Co.*, 82 L. T. 487, 2 W. C. C. 47.

<sup>87</sup> *Armitage v. Lancashire, etc., Co.*, 86 L. T. 883, 4 W. C. C. 5.

the statute and on the further ground that at the time the demand was made there was no relation of employer and employed between the parties.<sup>88</sup>

§ 495. **Burden of proof that accident arose out of and in the course of employment.**—A person claiming compensation under the English statute must prove that the injury arose out of and was sustained in the course of employment of the injured person. But the burden may be shifted, especially when the claim is by the dependent of the workman who has been killed and whose evidence is therefore not available. In such a case if facts are proved, the natural and reasonable inference from which is that the accident happened while the deceased was engaged in his employment, it then falls upon the employer, if he disputes the claim, to prove that the contrary was the case.<sup>89</sup>

<sup>88</sup> *Greenhill v. Daily Record*, 46 Scotch L. R. 483, 2 B. W. C. C. 244.

<sup>89</sup> *Grant v. Glasgow R. Co.*, 45 Scotch L. R. 128, 1 B. W. C. C. 17; see also *Pomfret v. Lancashire, etc., R. Co.*, (1903) 2 K. B. 718, 5 W. C. C. 22; *Chitty v. Nelson*, 126 L. T. J. 172, 2 B. W. C. C. 496; *Thackway v. Connelly*, 3 B. W. C. C. 37.





## CHAPTER XXIX.

### DEPENDENTS OF DECEASED WORKMAN.

Sec.	Sec.
496. Meaning of term "dependent."	505. Mother of injured child dependent though supported by husband.
497. Mother total dependent of one of several sons.	506. Wife separated from husband.
498. Total and partial dependents of same workman.	507. Presumption of death from lapse of time.
499. Parents.	508. Right of representative of deceased dependent.
500. Aliens.	509. Necessity of appointment of administrator of dependent.
501. Paupers.	510. Death of workman under compensation not a bar to claim of dependents.
502. Posthumous children.	
503. Illegitimates.	
504. Where one is the dependent of more than one injured workman.	

§ 496. **Meaning of term "dependent."**—A dependent within the meaning of the British Compensation Act is a person who was dependent upon the deceased workman for the ordinary necessities of life, having regard to his class and position and not one who merely derived a benefit from such earning.<sup>1</sup>

But one is not rendered less a dependent by the fact that he is able to maintain himself without the assistance of the deceased workman.<sup>2</sup>

The widow and children of the deceased workman may be dependent though they contribute to the family fund.<sup>3</sup>

"In our judgment, a widow and children are, according to the true intent and meaning of the act none the

<sup>1</sup> *Simmons v. White*, 80 L. T. 344, 1 W. C. C. 89.

<sup>2</sup> *Howells v. Vivian*, 85 L. T. 528; 85 L. T. 529.

<sup>3</sup> *Senior v. Fountain*, 23 T. L. R. 634, 9 W. C. C. 116.

less 'dependents wholly dependent upon his earnings at the time of his death' because the workman has been enabled through the receipt by him, either directly or through his wife as agent, of moneys from wage earning sons, or of money coming to him through other channels, to augment the fund out of which he has been legally bound to maintain and has maintained his household."<sup>4</sup>

And one may be a dependent though the workman has sent to such dependent money at irregular times and in irregular amounts.<sup>5</sup>

Money which comes to a dependent on the death of a workman does not affect the question of whether or not he is dependent upon his earnings at the time of the death of the workman. What the law intends is the condition immediately before the death of the workman.<sup>6</sup>

The question of dependency in any case is a question of fact and not one of law.<sup>7</sup>

**§ 497. Mother total dependent of one of several sons.**—In a case where a widowed mother has several grown up sons all at work but she lives with one of them, her only unmarried son, and is in fact entirely supported by his earnings at the time of his death, she is a total dependent of such son within the meaning of the compensation act of 1906, notwithstanding the other sons are all able and liable to contribute to her support.<sup>8</sup>

**§ 498. Total and partial dependents of same workman.**—Dependents who were in part dependent upon

<sup>4</sup> Senior v. Fountain, 23 T. L. R. 634, 9 W. C. C. 116.

<sup>5</sup> Follis v. Schaaque Machine Works, 13 B. C. 471, 1 B. W. C. C. 442.

<sup>6</sup> Price v. Penrikyber Colliery Co., 85 L. T. 477, 4 W. C. C. 115.

<sup>7</sup> Main Colliery Co. v. Davies, (1903) A. C. 358, 1 W. C. C. 92, 2 W. C. C. 108; Hodgson v. West Stanley Colliery, (1910) A. C. 229, 102 L. T. 194, 3 B. W. C. C. 260.

<sup>8</sup> Rintoul v. Dalmeny Oil Co., 45 Scotch L. R. 809, 1 B. W. C. C. 340.

the earnings of a deceased workman are entitled to recover compensation though there may be in existence dependents who are wholly so dependent.<sup>9</sup>

§ 499. **Parents.**—The question whether the parent is in fact a dependent is a question of fact and not of law. The case is clear where the child is a regular contributor to the family fund.<sup>10</sup>

It is not absolutely required that the contributions should be continuous; it is sufficient if there is a willingness to contribute and the son is unable to make the contribution by reason of lack of employment. "We should be whittling away the act were we to say that where money payments have been made, as here, and when the workman is out of employment or out of full employment for a short time, that then there was no dependency."<sup>11</sup>

§ 500. **Aliens.**—It is the later view of the Canadian courts that the benefits of the Workmen's Compensation Acts do not extend to alien dependents, resident abroad.<sup>12</sup>

"The Workman's Compensation Act is in its nature domestic or municipal, and it may be regarded as a shifting of what one might call (though strictly not one) a duty, namely, to provide for the destitute from the State to the employer. This province owes no such obligation to aliens abroad. These could not become a burden upon the State or upon private charity in the State. Hence I think no intent ought to be inferred to impose an obligation on employers beyond that essential to accomplish what would appear to be the legislature's intention; or, to put it in another way that the general

<sup>9</sup> *Robinson v. Anon*, 6 W. C. C. 117.

<sup>10</sup> *Turner v. Miller*, 3 B. W. C. C. 305.

<sup>11</sup> *Robertson v. Hall Steamship Co.*, 3 B. W. C. C. 368; see also *Main Colliery Co. v. Davies*, 16 T. L. R. 460, 2 W. C. C. 108.

<sup>12</sup> *Krzus v. Crow's Nest Pass Coal Co.*, 4 B. W. C. C. 469.

words used in the act relied upon as including foreign dependents, must be construed by reference to what the legislature may fairly and reasonably be considered to have had in contemplation. As against this view of the statute there is the one based upon the notion that the act holds out to every workman who accepts employment within the province, a promise that in case of his death in such employment, by accident, the employer shall be compelled to compensate his dependents. This, I think is based upon the idea that the dependents derive their rights from or through the deceased workman; but, as pointed out in *Tomalin v. Pearson*, (1909) 2 K. B. 61, the benefit conferred by this attitude is not founded upon contract at all, but arises out of statutory duty imposed for the benefits of the dependents. It is a benefit conferred directly upon the dependents."<sup>13</sup>

**§ 501. Paupers.**—The mere fact that one may be legally liable to contribute to the cost of maintenance of the person for whom the claim is set up is not determinative of the question of dependency. Accordingly, it has been held that an inmate of a poorhouse was not dependent on the earnings of another, because such other person was legally liable to contribute to the cost of the maintenance of the pauper.<sup>14</sup>

**§ 502. Posthumous children.**—A posthumous child may be a dependent of its father to the same extent as children in being at the time of his death.<sup>15</sup>

And the rule is the same though the child may be illegitimate.<sup>15a</sup>

In the case announcing the latter principle the Master

<sup>13</sup> *Krzus v. Crow's Nest Pass Coal Co.*, 4 B. W. C. C. 469; but see *Varsick v. British Columbia Copper Co.*, 12 B. C. 286.

<sup>14</sup> *Rees v. Penrikyber Navigation Co.*, 87 L. T. 661, 5 W. C. C. 117.

<sup>15</sup> *Villar v. Gilbey*, (1907) A. C. 139; *Williams v. Ocean Coal Co.*, 97 L. T. 150, 9 W. C. C. 44; *Day v. Markham*, 6 W. C. C. 115.

<sup>15a</sup> *Schofield v. Orrell Colliery Co.*, 100 L. T. 104, 2 B. W. C. C. 301.

of the Rolls said: "The illegitimate child is made a member of the family in the same way and to the same extent as a legitimate child, and I think it follows that a posthumous illegitimate child is made a member of the family to the same extent as a legitimate child actually born at the time of the death. It is idle to say that according to the strict meaning of the words a posthumous child, whether legitimate or not, was not a dependent at the date of the death. As I have said, our construction was a straining of the language; but I am entirely unable to draw any distinction from the fact that a legitimate child when born would have a right to be supported by the father, whereas an illegitimate would not have any such right until an affiliation order had been obtained. The question of dependency is a mixed question of law and fact, and the facts of this case support the presumption of dependency. The mother of the child and the deceased were engaged to be married. The deceased avowed the child to be his. He agreed to marry the mother; he paid for the banns, which had been twice published; and the date of the marriage was fixed. I can not bring myself to doubt that the father did not intend the child, to use his own language, to be a chance child. He intended to make the child legitimate, and, whatever happened, he intended to take upon himself the responsibility for the maintenance of the child. In that sense the child was a member of the family of the deceased, and was dependent on the earnings of the deceased."<sup>16</sup>

§ 503. **Illegitimates.**—Neither the mother of the illegitimate son nor her husband who was not the putative father of the boy, are entitled to compensation and in the case of the mother, the principle is stronger where she is supported by her husband. In such a case the attempt to make out that the husband of the mother was

<sup>16</sup> *Schofield v. Orrell Colliery Co.*, 100 L. T. 104, 2 B. W. C. C. 301.

the stepfather of the child was regarded as preposterous.<sup>17</sup>

An illegitimate child is the dependent of a father found to be such in proper proceedings, and is entitled to compensation on the death of such father through an accident.<sup>18</sup>

In some jurisdictions, status as an illegitimate may be overcome by proof of a common-law marriage between the father and mother of the alleged illegitimate.<sup>19</sup>

**§ 504. Where one is the dependent of more than one injured workman.**—One may be the dependent of more than one workman. There was such a case where two sons of a workman who were living at home gave all their earnings to their parents and these earnings together with the earnings of the father formed a common fund, out of which the whole family, which included six other children and the mother who were not earning wages—was maintained. The father and the two wage earning sons were killed in the same accident. It was held that the widow was dependent on both her husband and her sons and was not wholly dependent on the earnings of the husband. The court further held that a dependent on more than one workman can recover more than the maximum amount of compensation for the death of one workman only. "It is one thing to say that in a particular case a father is partly dependent on his son's contributions because they assist him in discharging his legal duty of maintaining his family. It is quite a different thing to say that in all cases while the father is alive the mother is wholly dependent upon him. I do not see that the latter proposition in any way flows from the former."<sup>20</sup>

<sup>17</sup> *McLean v. Moss Bay Steel Co.*, 100 L. T. 871, 2 B. W. C. C. 282.

<sup>18</sup> *Bowhill v. Neish*, 46 Scottish L. R. 250, 2 B. W. C. C. 253.

<sup>19</sup> *Fife Coal Co. v. Wallace*, 46 Scottish L. R. 727, 2 B. W. C. C. 264.

<sup>20</sup> *Hodgson v. West Stanley Colliery Co.*, 102 L. T. 194, 3 B. W. C. C. 260.

**§ 505. Mother of injured child dependent though supported by husband.**—The mother of an injured son may be a partial dependent on her son where the earnings of the son were paid into the family fund though the mother is supported by her husband.<sup>21</sup>

**§ 506. Wife separated from husband.**—A wife living apart from her husband and supporting herself by her own labor, is not strictly a dependent within the meaning of the compensation laws. The theory of these laws is that the dependent shall be one actually dependent on the deceased workman. The mere fact that a man in ordinary circumstances is liable to support his wife in law is not of itself sufficient evidence to support a claim for compensation by his widow. The obligation or liability to support is not the same as actual support. "Money coming to a widow under the act is not a present in consideration of her status. It is a payment by a third person to compensate her, as a dependent, for her actual pecuniary loss by her husband's death and \* \* \* there is no rule of law to prevent the arbitrator from finding, that though married to the deceased the applicant was not dependent upon him."<sup>22</sup>

This was the holding in a case where a wife left her husband on account of his cruelty and went to live with her relations and supported herself for more than twelve years by her own work.<sup>23</sup>

In another case, however, the wife was held partially dependent upon her husband's earnings where she had been turned out of her home by her husband and though not supported by him she had made efforts to obtain such support.<sup>24</sup>

<sup>21</sup> *McLean v. Moss Bay, etc., Steel Co.*, 3 B. W. C. C. 402; see also *Hodgson v. West Stanley Colliery Co.*, 3 B. W. C. C. 402, 260.

<sup>22</sup> *New Monckton Collieries v. Keeling*, 4 B. W. C. C. 332.

<sup>23</sup> *Lindsay v. McGlashen*, 45 Scottish L. R. 559, 1 B. W. C. C. 85.

<sup>24</sup> *Medler v. Medler*, 124 L. T. J. 410, 1 B. W. C. C. 332.

**§ 507. Presumption of death from lapse of time.—**

The proceedings for compensation for the death of a seaman are regulated by the compensation act of 1906 and not by the provisions applicable to the recovery of wages under the Merchants Shipping Act of 1894 which latter provisions are incorporated in the act of 1906, for the purpose of facilitating seamen in making their claims. The lapse of twelve months during which a ship has not been heard of after which she is deemed to have been lost with all hands, is not a condition precedent to a claim for compensation under the workmen's compensation act. Hence, where by the ordinary rules of evidence, a seaman would be deemed to have been lost at sea with his ship, an application for compensation may be made notwithstanding that twelve months have not elapsed from the time when the ship was last heard of.<sup>25</sup>

**§ 508. Right of representative of deceased dependent.**—Where the rule fixes a compensation to be paid to a dependent, the right to this amount is not determined by the death of the dependent. The amount is to be paid to the representative of the deceased though the need has disappeared. This is the rule in England where the statute does not expressly make the death of the dependent end the right to compensation. The representative of the deceased dependent is entitled to the compensation though such dependent made no claim during his lifetime.<sup>26</sup>

In such a case Lord Chancellor Lorebörn said: "If there is this right, when does it arise or become vested? The statute evidently treats it as arising because of the workman's death. It seems to follow that it arises on

<sup>25</sup> *Maginn v. Carlingford, etc., Steamship Co.*, 43 Ir. L. T. 123, 2 B. W. C. C. 224.

<sup>26</sup> *United Collieries Co. v. Hendry*, 101 L. T. 129, 2 B. W. C. C. 308; *Hendry v. United Collieries Co.*, 45 Scotch L. R. 944, 1 B. W. C. C. 289; *Darlington v. Roscoe*, 96 L. T. 179, 9 W. C. C. 1.



the workman's death, unless some other event is fixed. Counsel for the appellant sought to invoke the second section of the act, which declares that proceedings for the recovery of compensation shall not be maintainable unless notice has been given as soon as practicable, and the claim for compensation made within six months. This is merely a bar to the remedy, unless conditions precedent to the remedy have been fulfilled, and is analogous to the numerous instances in which notice of action is required by statute. It does not help in determining when the right to compensation arises. I observe that in Lord M'Laren's opinion, if the claim is made within the statutory period, and the dependent dies before an award has been made, the right to an award of compensation has vested in the dependent, and a right to follow out the proceedings in the arbitration passes to the legal personal representatives. But if the claim has not been made his Lordship thinks that the employer's liability is terminated by the death of the dependent. That opinion is entitled to the greatest respect, but I cannot agree. I cannot see why the claim instead of the death is to be regarded as the signal for the right to compensation vesting. And even if it were so, the act does not require that the dependent himself should make the claim, and I do not see why that right to make the claim should not pass to the executor. It seems to me, therefore, that as the person represented by the respondent was the only dependent, her representative may properly claim all that she was entitled to, the right being transmissible as property. If there had been several dependents the law would not be different, but the discretion of the county court judge or sheriff in apportioning might very likely render the proceedings unprofitable."<sup>27</sup>

<sup>27</sup> *United Collieries Co. v. Hendry*, 101 L. T. 129, 2 B. W. C. C. 308.

**§ 509. Necessity of appointment of administrator of dependent.**—Under the British statute it is not necessary for a dependent to take out letters of administration to the estate of the deceased.<sup>28</sup>

**§ 510. Death of workman under compensation not a bar to claim of dependents.**—The fact that the injured workman received compensation will not bar dependents, where the death was the result of the accident for which compensation was originally allowed. The rights of the dependent are different from those of the deceased and wholly independent. They do not come into existence until he is dead.<sup>29</sup>

<sup>28</sup> *Clapworthy v. Green*, 4 W. C. C. 152, 86 L. T. 702.

<sup>29</sup> *Jobson v. Cory*, 4 B. W. C. C. 284; *Howell v. Bradford Co.*, 104 L. T. 435, 4 B. W. C. C. 203.

## CHAPTER XXX.

### LIABILITY OF PRINCIPAL CONTRACTOR—SUBROGATION— EXEMPTION CONTRACTS.

Sec.	Sec.
511. Legal relation of employer and workman—When does it exist?	512. Liability of principal contractor.
	513. Subrogation—Indemnity.
	514. Exemption contracts.

§ 511. Legal relation of employer and workman—When does it exist?—Whether any person is an employé of an employer or not, depends upon whether there exists a contract of service which would create the legal relation of workman (workwoman) and employer (any person, firm, partnership, public, private and municipal corporation). Under the British Act there are specific exceptions: Persons whose annual remuneration exceeds two hundred and fifty pounds, out workers, a member of a police force, a member of one employer family dwelling in his house, and persons engaged in casual employment are excluded from the benefit of the act (sec. 13 of British Act 1906).

#### What is a Contract of Service?

The alleged employer, from whom compensation was claimed, was a charitable institution, and had instituted a labor yard, and in return for work done therein by persons out of employment, gave such persons their board and lodging and occasionally trifling sums of money. One of such persons having been injured while so engaged, the decision of the county court judge upon these facts alone that applicant had not proved a contract of service was sustained.<sup>1</sup>

<sup>1</sup>Burns v. Manchester, etc., Mission, 1 B. W. C. C. 305; 125 L. T.

A municipal corporation owned a plat of land adjoining one of the markets, which was occupied by the ruins of an old mill. The corporation through public advertisement sold the building to Todd for fifteen pounds and he was to pull down the building and remove the material. In pulling down the building one of Todd's workmen was fatally injured and his widow brought a claim against both Todd and the corporation. It was held that the corporation was liable as principal.<sup>2</sup>

A distress committee under the unemployment workmen act 1905 provided temporary work for an applicant, in the course of which he was injured. During his incapacity he received poor relief at the rate of ten shillings per week. It was held that the committee were employers within the meaning of the workmen's compensation act of 1906 and liable for compensation.<sup>3</sup>

Under the Ohio workmen's insurance act an "employer" is a person, firm, partnership, municipal, private or public corporation who employs five or more workmen or operatives regularly in the same business, or in or about the same establishment (section 20-1 of act) between whom and some other person there exists a contract of service.

**§ 512. Liability of principal contractor.**—Section 4 of the British Act of 1906 provides:

Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business contracts with any other person

J. 336; *Hiller v. The Governors, etc.*, 25 T. L. R. 762; *Waites v. The Franco-British Exhibition*, 25 T. L. R. 441.

<sup>2</sup> *Mulrooney v. Todd, etc.*, 11 B. W. C. C. 191; 100 L. T. 99.

<sup>3</sup> *Gilroy v. Mackie, etc.*, 11 B. W. C. C. 269; 46 S. L. R. 325. To the same effect: *Porter v. Central, etc.*, Body, 11 B. W. C. C. 296; and 1 K. B. 173; *Crump v. Lewis*, (1908) 1 K. B. 858; *Gilroy v. Mackie, etc.*, (1909) S. C. 466; 46 S. L. R. 325; *Murphy v. Guardians of Enniscorthy Union*, (1908) 2 Ir. L. R. 609.

(in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

The provision was invoked in a case where a shop keeper and a billiard saloon keeper determined to open a skating rink. They bought an existing iron building and contracted with a third person to remove it for them to its new position. In the course of the work a laborer in the employ of the contractor was injured and claimed compensation from the skating rink owners as "principals" within the meaning of the section. It was held that they did not come within its meaning.<sup>4</sup>

Another case involving the same section arose where a timber merchant in the course of his business, having entered into a contract to purchase and carry away some growing timber contracted with another party for the felling of the timber and the latter party employed a son, who lived with him to help in the work. The son met with an accident while cutting the timber. It was held that the timber merchant as "principal" was not liable to pay the son compensation,

<sup>4</sup> *Skates v. Jones*, 103 L. T. 408, 3 B. W. C. C. 460; see also *Walsh v. Hayes*, 2 B. W. C. C. 202; *Waites v. Franco-British Exhibition*, 25 T. L. R. 441; 2 B. 199—C. A.

as he was expressly excluded as a workman under a later section of the act.<sup>5</sup>

A municipal corporation may be a principal within the meaning of the section.<sup>6</sup>

The expression, "work undertaken by a principal," is generally considered to import some obligation on the part of the principal to do the work and no contract of service with the applicant.<sup>7</sup>

In one of the cases a ship owner contracted with a party to clean the ship's boilers. This party engaged a number of boiler makers to do the work, and one of them was injured by an accident. The injured person received his wages from and was subject to the orders of his immediate employers in the performance of his work and a slight supervision was exercised by the foreman of the ship owner. It was held that the injured workman was not in the employment of the ship owner and not entitled to receive compensation from him and that the work of boiler scaling was not work undertaken by the ship owner in the course of or for the purposes of his trade or business in the sense of section four.<sup>8</sup>

**§ 513. Subrogation—Indemnity.**—It is specially provided by the British Act of 1906 that the person by whom the compensation is paid, and any person who has been called on to pay an indemnity under the provision of the act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in

<sup>5</sup> Marks v. Carne, 100 L. T. 950, 2 B. W. C. C. 186.

<sup>6</sup> Mulrooney v. Todd, 100 L. T. 99, 2 B. W. C. C. 191.

<sup>7</sup> Walsh v. Hayes, 43 Ir. L. T. 114, 2 B. W. C. C. 202.

<sup>8</sup> Spiers v. Elderslie Steamship Co., 46 Scotch L. R. 893, 2 B. W. C. C. 205; but see Pollard v. Goole, etc., Towing Co., 3 B. W. C. C. 360.

default of agreement be settled by action, or, by consent of the parties, by arbitration.<sup>8a</sup>

The evidence in one of the cases showed that a workman was injured as the result of a breach, by two fellow workmen, of certain regulations of the Factory and Workshop Act. The workmen were convicted and fined for this violation of the act. It was held that notwithstanding the infliction of a fine upon the fellow-workmen under the Factory Act, an action for damages still lay against them at the suit of the injured man, and they therefore were liable to indemnify the employers under section 6 of the workmen's compensation act. A fellow-workman is a "person other than the employer" within the meaning of that section.<sup>9</sup>

**§ 514. Exemption contracts.**—The British act applies notwithstanding any contract to the contrary made after its enactment and an agreement between the injured employé and his employer will not be sustained where it contains terms different to those specified and less advantageous to the employer.<sup>10</sup>

It is very clear that such a contract made by an infant will not be upheld where it is not beneficial to the infant.<sup>11</sup>

<sup>8a</sup> *Evans v. Cook*, 7 W. C. C. 41; *Pacific Nav. Co. v. Pugh*, 23 T. L. R. 622, 9 W. C. C. 39.

<sup>9</sup> *Gibson v. Dunkerley*, 3 B. W. C. C. 345; *Lees v. Dunkersley*, 103 L. T. 467, 4 B. W. C. C. 115; *Lankester v. Miller*, 4 B. W. C. C. 80.

<sup>10</sup> *British, etc., Nav. Co. v. Neil*, 3 B. W. C. C. 413.

<sup>11</sup> *Morter v. Great Eastern R. Co.*, 2 B. W. C. C. 480, 126 L. T. J. 171.





## CHAPTER XXXI.

### AMOUNT OF COMPENSATION.

- | Sec.   | Sec.  |
|--|---|
| 515. Right to make claim for compensation is personal.                                   | by reason of change of circumstances.   |
| 516. Compromise of claims.   | 532. Reduction of compensation because of ability to do light work.             |
| 517. Lump sum payment.   | 533. Effect of bona fide efforts to obtain employment.                          |
| 518. Right to compensation as dependent on proximate cause of death.                     | 534. Diminution in earnings of injured employé owing to general fall in wages.  |
| 519. Compensation for total incapacity.  | 535. Deduction of hospital fees.  |
| 520. Loss of sight—As total or permanent disability.                                     | 536. Deduction of compensation while injured workman in prison.                 |
| 521. Partial incapacity due to clumsiness on recovery.                                   | 537. Effect of acceptance of relief funds for injury.                           |
| 522. Exaggeration of condition.  | 538. Deductions from compensation to dependents.                                |
| 523. Disability prolonged by failure to take exercise.                                   | 539. Consideration of profits of business carried on by injured workman.        |
| 524. Pain and suffering not recompensed.   | 540. Effect of receiving same or increase in earnings after injury.             |
| 525. Average weekly earnings.  | 541. Probable earnings of infant.   |
| 526. Average weekly earnings—Grade of employment in which injuries received.             | 542. Injuries after brief employment.   |
| 527. Average weekly earnings—Breaks in employment.                                       | 543. Death of injured workman while receiving compensation for previous injury. |
| 528. Average weekly earnings—Inclusion of allowances and gratuities.                     | 544. Amount of compensation where dependent illegitimate.                       |
| 529. Average weekly earnings—Deduction of sums paid helper.                              | 545. Effect of certificate of termination of incapacity.                        |
| 530. Average weekly earnings—Consideration of earnings of others in the same employment. |   |
| 531. Reduction of compensation   |   |

§ 515. Right to make claim for compensation is personal.—Dependents who fail to make their claims

for compensation within the time fixed by law are not saved by proceedings instituted by other claimants within the proper time. This principle was announced in a case where the father of a workman killed by accident commenced action for damages against the employer of his son and on the failure of this action asked for compensation to be assessed in accordance with the compensation act. The action was dismissed but was reserved as a proceeding for assessing compensation. The mother and sisters of the deceased thereupon also claimed compensation in the proceedings by the father as dependents. They had made no claim previously and much more than six months had passed since the death. It was held that the right to the alternative proceeding was a personal privilege to the one who brought the action and that the six months for claim having expired the mother and sisters were not entitled to compensation.<sup>1</sup>

**§ 516. Compromise of claims.**—The compromise of a claim for compensation will generally be upheld where fairly entered into, but the compromise of a claim or award will not be sustained where imposition has been practiced to bring about such settlement. It is essential to fairness in this respect that the workman should understand the nature and terms of the papers he signs.<sup>2</sup>

It is usually a question for the jury whether the workman understood the nature and effect of receipts signed by him.<sup>3</sup>

In one of the cases a judge refused to record a memorandum of agreement for a lump sum settlement on the ground of inadequacy. The workman then ap-

<sup>1</sup> *Kyle v. McGintys*, 48 Scotch L. R. 474, 4 B. W. C. C. 389.

<sup>2</sup> *Huckle v. London County Council*, 4 B. W. C. C. 113; *Macandrew v. Gilhooley*, 48 Scotch L. R. 511, 4 B. W. C. C. 370; *Beech v. Bradford Corporation*, 4 B. W. C. C. 236.

<sup>3</sup> *Huckle v. London County Council*, 4 B. W. C. C. 113.

plied for compensation, and the judge, finding that the incapacity was no longer due to the accident and that the amount in fact paid under the abortive settlement was enough to cover all compensation due for a short period during which the incapacity had been due to the accident, awarded in favor of the employers.<sup>4</sup>

A settlement was set aside in one case where the workman signed a receipt in full settlement of his claim for a specified amount and the actual amount paid him was only about half the amount specified.<sup>5</sup>

In another case a discharge was held ineffective which purported to be in full satisfaction of claims past and future and was signed by the workman in the belief that he was merely signing a receipt for compensation past due. The court held that the agreement would not bar the employé from recovering future compensation.<sup>6</sup>

The fact that the employer, as one condition for settlement, agrees to keep the workman in his employ does not prevent the discharge of such workman for a good and sufficient reason after a reasonable interval.<sup>7</sup>

In any award of compensation the employer should have credit for amounts paid by him to the employé for which he was not legally liable.<sup>8</sup>

So credit should be given the employer for sums paid the employé under an ineffective compromise of the claim.<sup>9</sup>

**§ 517. Lump sum payment.**—The British act allows a redemption of weekly payments into a lump sum present payment. The cases do not lay down strict

<sup>4</sup> *Beech v. Bradford Corporation*, 4 B. W. C. C. 236.

<sup>5</sup> *Hawkes v. Coles*, 3 B. W. C. C. 163.

<sup>6</sup> *Ellis v. Lochgelly Iron, etc., Co.*, 46 Scotch L. R. 960, 2 B. W. C. C. 136.

<sup>7</sup> *Lawrie v. Brown*, 45 Scotch L. R. 477, 1 B. W. C. C. 137.

<sup>8</sup> *Kempson v. The Moss Rose*, 4 B. W. C. C. 101; see also *McDermott v. The Tintoretto*, 103 L. T. 769, 4 B. W. C. C. 123.

<sup>9</sup> *Horsman v. Glasgow Navigation Co.*, 3 B. W. C. C. 27.

rules for estimating the amount of such payments. The court is not required to figure on the actual value on the basis of age and expectancy but may figure on a business footing as between parties.<sup>10</sup>

The estimate should not be made on the basis of a permanent disability where the injury is such that it may be greatly lessened or entirely overcome.<sup>11</sup>

In such a computation the court may treat the loss of an arm as a permanent incapacity.<sup>12</sup>

"The loss of an arm is necessarily a permanent, though it need not be and often is not a total incapacity; for the capacity of a one armed man can never be of the same quality as that of a man with two arms; though it may be that at certain occupations and under certain conditions the former can earn as good a wage as the latter.<sup>13</sup>

**§ 518. Right to compensation as dependent on proximate cause of death.**—Where the death results from the accident the law does not concern itself with the question whether the death was the natural and probable consequence of the particular injury.<sup>14</sup>

**§ 519. Compensation for total incapacity.**—An award for total incapacity was sustained where a medical referee reported that an injured seaman could perform light work if he wore a truss but that he was not fit for work as a seaman or for lifting.<sup>15</sup>

So there was a case of total incapacity where the employé recovered sufficiently to resume work but was refused work by his employer and he was unable to

<sup>10</sup> Grant v. Conroy, 6 W. C. C. 153.

<sup>11</sup> O'Neil v. Anglo-American Oil Co., 2 B. W. C. C. 434.

<sup>12</sup> National Telephone Co. v. Smith, 2 B. W. C. C. 417.

<sup>13</sup> National Telephone Co. v. Smith, 46 Scotch L. R. 988, 2 B. W. C. C. 417.

<sup>14</sup> Dunham v. Clare, 66 L. T. 751, 4 W. C. C. 102.

<sup>15</sup> Hendrickson v. The Swanhilda, 4 B. W. C. C. 233.

find employment because of his condition with its tendency to a break down.<sup>16</sup>

It is a question of fact in every case whether an injured workman has completely recovered or not; and if the judge finds that the workman has completely recovered he has jurisdiction in a proper case to terminate the weekly payments.<sup>17</sup>

**§ 520. Loss of sight as total or permanent disability.**—The loss of a single eye is obviously a partial disability permanent in its nature.<sup>18</sup>

The loss of one eye may operate as an injury to the other to such an extent as to make the disability total, but the burden is on the injured workman to establish that fact and that the injury to the other eye was due to the accident.<sup>19</sup>

In one of the cases a carman received a blow on the temple which injured his eye so much that he could only perceive hand movements in front of it, and it was useless for many purposes. Ten years later this same eye was struck by his horse's tail and inflammation ensued. The eye was removed in hospital. It was held that the incapacity was due to the second and not the first injury.<sup>20</sup>

**§ 521. Partial incapacity due to clumsiness on recovery.**—In one of the cases a waitress received an injury to her finger which caused it to become stiff and prevented her working as efficiently as before. She received compensation for some time and then returned to her old work at her old wages. She could not work as well as before and complaint about her clumsiness was allowed.<sup>21</sup>

<sup>16</sup>Thomas v. Fairbairn, 4 B. W. C. C. 195.

<sup>17</sup>Reyners v. Makin, 4 B. W. C. C. 267.

<sup>18</sup>Arnott v. Fife Coal Co., 48 Scotch L. R. 828, 4 B. W. C. C. 361.

<sup>19</sup>McGhee v. Summerlee Iron Co., 48 Scotch L. R. 807, 4 B. W. C. C. 424; see also Lee v. Baird, 45 Scotch L. R. 717, 1 B. W. C. C. 34.

<sup>20</sup>Martin v. Barnett, 3 B. W. C. C. 146; see also Ball v. Hunt, 104 L. T. 327, 4 B. W. C. C. 225.

business was made by her employers and she left work and without any attempt to find other work claimed compensation. It was held that she could not work as well as before and that she was therefore partially incapacitated.<sup>21</sup>

**§ 522. Exaggeration of condition.**—The compensation is subject to readjustment where there is such recovery from the injury that the workman can return to light work. In the proceeding for this readjustment the court may thoroughly investigate the claim of the workman that he has not recovered by hearing testimony that the workman is exaggerating his condition.<sup>22</sup>

An injured workman was paid compensation for 61 weeks by his employers. Subsequently the employers offered the workman light work, which he refused without attempting to do it. The county court judge held that the workman had acted unreasonably in refusing to go and see what the work offered was, and that, if he had accepted the offer and returned to work, by the date of the arbitration he would have been under no disability. He therefore stopped compensation, but made a declaration of liability. It was held that the decision was on a question of fact, and that there was evidence to support it.<sup>23</sup>

**§ 523. Disability prolonged by failure to take exercise.**—The injured workman is not entitled to compensation for the time that his disability is prolonged by his own neglect to take the exercise necessary to restore him to a fit condition. "The County Court Judge has found that the workman's present inability to do his ordinary work was due only to want of condition arising out of long-continued and unnecessary idle-

<sup>21</sup> Ward v. Miles, 4 B. W. C. C. 182.

<sup>22</sup> Price v. Burnyeat, 2 B. W. C. C. 337.

<sup>23</sup> Furness, Withy & Co. v. Bennett, 3 B. W. C. C. 195; but see Burgess v. Jewell, 4 B. W. C. C. 145.

ness. His muscles had become flabby, and he did not do what a reasonable man would do, viz., take some form of exercise to put his muscles right again. It was said on his behalf, some medical man must tell him so. With that contention I disagree. A reasonable man would decide the matter for himself. Cases of this kind require the most careful investigation, that people who have recovered from the effects of an accident do not become merely pensioners of their employers.”<sup>24</sup>

**§ 524. Pain and suffering not recompensed.**—The British compensation act does not authorize any allowance for pain and suffering. If the workman receives the same compensation after the accident that he did before the accident, he is not entitled to compensation for the pain he suffers as a result of the accident. The allowance is confined to the time lost as the result of the accident.<sup>25</sup>

**§ 525. Average weekly earnings.**—The British act of 1906 requires that the average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Under this act where the workman has been in the same employment for three years if the injury results in death, or for one year if the injury is a non-fatal one the actual history of the workman furnishes adequate material for fixing the compensation. The dominant principle is that such earnings are to be computed in the manner best calculated to give the rate per week at which the workman was remunerated, not necessarily at the precise time of the accident. When computation of the particular man’s rate is impossible regard may be had to analogous cases. Computation may be impossible not only where no materials for ar-

<sup>24</sup>Upper Forest, etc., Fin Plate Co. v. Grey, 3 B. W. C. C. 424; see also David v. Windsor Steam Coal Co., 4 B. W. C. C. 177.

<sup>25</sup>Iron v. Davis, 80 L. T. 673, 1 W. C. C. 26.

living at the rate of remuneration exist but where such materials are lost or unavailable. The term "grade" refers to the particular rank in the industrial hierarchy to which the workman belongs. The grade and average earnings of the grade having been ascertained there is no obligation to adopt those earnings in all cases as the measure of compensation of the workman. The personal element must then be considered. The words "employment by the same employer" mean any step up or down and is to be regarded as commencing a fresh employment. Absence due to illness or matters beyond the control of the workman are to be disregarded and the employment considered as continuous notwithstanding such absence.<sup>26</sup>

Where a workman, who is partially incapacitated as the result of an accident, afterwards accepts from his employer work of a different class from that in which he was injured, and it is proved that he is able to earn certain wages in such other employment, the court cannot award him by way of compensation a greater sum than the difference between his wages before the accident and the wages offered him after the accident.<sup>27</sup>

**§ 526. Average weekly earnings—Grade of employment in which injuries received.**—It is the general rule that the compensation is based on the wages received in the grade at which the workman was engaged at the time he received his injuries, and this though he was capable of performing services in a higher grade and as a matter of fact had been employed on former occasions in the higher grade employment.<sup>28</sup>

Under the act of 1897 the period of employment for assessing average weekly earnings was not affected by a change of the employment and a consequent change

<sup>26</sup> *Perry v. Wright*, 1 B. W. C. C. 35; 98 L. T. 327.

<sup>27</sup> *Brookfield Linen Co. v. Clugston*, 44 Ir. L. T. 10.

<sup>28</sup> *Babcock v. Young*, 48 Scotch L. R. 298, 4 B. W. C. C. 367.



in the rate of the wages. When during employment for twelve months there has been a change in the rate of wages, the average was taken on the earnings for the whole twelve months, and not on the earnings at the time of the accident.<sup>29</sup>

**§ 527. Average weekly earnings—Breaks in the employment.**—Where there has been a break in the employment during the previous twelve months the period of calculation in assessing the average weekly earnings is the period of the employment. The test of whether there has been a break in the employment is whether the relation of master and servant has been continued or not. A mere interval in the time the contract of service is running is not sufficient.<sup>30</sup>

The recognized and known incidents of the employment must be taken into consideration. Thus, in a case in which the injured workman was retained in the employment during the whole year, but owing to the fact that the work was discontinuous, he could not have worked for more than thirty-six weeks during the twelve months preceding the accident, fourteen weeks having been taken up with stoppages in the ordinary course of the employment, and two weeks having been recognized as holidays, and he did not in fact work more than thirty-three weeks, it was held that the basis of the compensation was 36/52 of his average weekly earnings during the thirty-three weeks he had actually worked.<sup>31</sup>

In calculating average weekly earnings, enforced holidays cannot be treated as dies non, so as to exclude them and the week in which they occur from the general average.<sup>32</sup>

<sup>29</sup> *Price v. Marsden*, 15 T. L. R. 184, 1 W. C. C. 108.

<sup>30</sup> *Jones v. Ocean Coal Co.*, 15 T. L. R. 339, 1 W. C. C. 94.

<sup>31</sup> *Anslow v. Cannock, etc., Colliery Co.*, 100 L. T. 786, 2 B. W. C. C. 365; see also *Kelly v. York St. Spinning Co.*, 43 Ir. L. T. J. 81, 2 B. W. C. C. 493.

<sup>32</sup> *Faircloth v. Waring*, 8 W. C. C. 99.

Intervals from work not amounting to a break in the employment should not be excluded in calculating average weekly earnings. If a man has been employed for twelve months, but has taken odd weeks off, the total amount of his earnings should be divided by 52 in order to calculate his average weekly earnings.<sup>33</sup>

The absence of a laborer from work for eight days has been held evidence of a break in the employment.<sup>34</sup>

Regular employment for a fixed number of days a week is a continuous employment for the purpose of determining the number of weeks for which the weekly earnings are to be averaged. Wages in irregular employments elsewhere are not to be taken into account.<sup>35</sup>

In one of the cases a collier tried to resume his old work as a collier with the same employers a year after receiving his injuries, but being unable to do so, he was given work by them as a windroad man. About a month after, he died from an accident within the meaning of the compensation law. It was held that there had been a break in the continuity of his employment, and that his compensation should be based on his earnings as a windroad man.<sup>36</sup>

**§ 528. Average weekly earnings—Inclusion of allowances and gratuities.**—The earnings of an employé include the rent of a house furnished by his employer,<sup>37</sup> and board and clothing furnished as part of his wages.<sup>38</sup>

<sup>33</sup> Keast v. Barrow Hematite Steel Co., 15 T. L. R. 141, 1 W. C. C. 99; Appleby v. Horsley Co., 15 L. T. 410, 1 W. C. C. 103.

<sup>34</sup> Giles v. Belford, 88 L. T. 754, 5 W. C. C. 136.

<sup>35</sup> Hathaway v. Argus Printing Co., 3 W. C. C. 177, 83 L. T. R. 465.

<sup>36</sup> Williams v. Wynnstay Colliers, 3 B. W. C. C. 473 (1910).

<sup>37</sup> Brown v. South Eastern R. Co., 3 B. W. C. C. 428.

<sup>38</sup> Sharpe v. Midland R. Co., 88 L. T. 545, 5 W. C. C. 128; Midland R. Co. v. Sharpe, 20 T. L. R. 546, 6 W. C. C. 119; Great Northern R. Co. v. Dawson, 92 L. T. 145, 7 W. C. C. 114.

The term also includes the value of articles furnished the employé as part of his equipment,<sup>39</sup> and gratuities by the public in the form of tips.<sup>40</sup>

The term will likewise include retainers paid to seamen as members of the naval reserve.<sup>41</sup>

In the wages of a ship steward are included his extra wages and the profits to which he is entitled by the sale of whisky.<sup>42</sup>

Where food and lodging is supplied the workmen by his employer the test of its value is the value to the workman.<sup>43</sup>

**§ 529. Average weekly earnings—Deduction of sums paid helper.**—The amounts paid by a miner to his helper should be deducted to obtain the average weekly wages of the miner.<sup>44</sup>

**§ 530. Average weekly earnings—Consideration of earnings of others in the same employment.**—Where no rate of wages has been expressly stipulated for and no payment made, an agreement may be implied for the usual rate of wages for that particular class of work in that locality at that time.<sup>45</sup>

Where there is no presumption of continuation of the employment, the weekly earnings are what the workman has earned in that employment, and not the

<sup>39</sup> *Abram Coal Co. v. Southern R. Co.*, 19 T. L. R. 579, 5 W. C. C. 125.

<sup>40</sup> *Penn v. Spiers*, 24 T. L. R. 354, 1 B. W. C. C. 401; *Knott v. Tingle*, 4 B. W. C. C. 55.

<sup>41</sup> *The Raphael v. Brandy*, 4 B. W. C. C. 307; *Brandy v. The Raphael*, 4 B. W. C. C. 6.

<sup>42</sup> *Skailes v. Blue Anchor Line*, 4 B. W. C. C. 6, (1911) 1 K. B. 360.

<sup>43</sup> *Rosenquist v. Bowring*, 1 B. W. C. C. 395, 98 L. T. 773; *Dothie v. McAndrew*, 98 L. T. 495, 1 B. W. C. C. 308.

<sup>44</sup> *McKee v. Stein*, 47 Scotch L. R. 39, 3 B. W. C. C. 544.

<sup>45</sup> *Jones v. Walker*, (1899) 105 L. T. 579, 1 W. C. C. 142.

ordinary standard weekly wage earned by others engaged in a similar occupation.<sup>46</sup>

**§ 531. Reduction of compensation by reason of change of circumstances.**—The court may reduce the amount of compensation where a change of circumstances in the condition of the workman renders him capable of earning more than his condition warranted at the time of the award. In one of the cases a workman in a steel rolling mill had the sight of one eye impaired by an accident. He received compensation for some time and the employers then applied to review the payments. Conflicting medical evidence was given as to the state of the man's vision and the judge referred the matter to a medical referee who reported that the man would see better with glasses. The judge on this found that the man was physically able to work, but that as a man with glasses was unlikely to obtain employment in a steel rolling mill, he was not commercially "able to earn" within the meaning of the law and dismissed the application to review. It was held that there was evidence of a change of circumstances which the judge ought to have considered and that the case must go back to him.<sup>47</sup>

**§ 532. Reduction of compensation because of ability to do light work.**—Where the condition of the injured workman improves so that he is capable of doing light work, the employer may apply for a reduction to the extent of his earnings in the light employment.<sup>48</sup>

Such an application is not to be defeated by the workman on the ground that his employers did not give him light work to do and that he was unable to obtain such work at other places. The sole question is whether the workman can do such light work.<sup>49</sup>

<sup>46</sup> *Bartlett v. Tutton*, 85 L. T. 531, 4 W. C. C. 133.

<sup>47</sup> *Guest v. Winsper*, 4 B. W. C. C. 289 (1911).

<sup>48</sup> *Cardiff Corporation v. Hall*, 4 B. W. C. C. 159.

<sup>49</sup> *Boag v. Lochwood Collieries*, 47 Scotch L. R. 47, 3 B. W. C. C.

In one of the cases a workman who had been in receipt of full compensation for some months, entered into agreement with his old employers to do light work at his former rate of wages and that in the event of total incapacity recurring, his rights under the act should revive. He again became totally incapacitated and claimed compensation which was paid. He was subsequently offered light employment at reduced wages with one-half the difference between his former and present wages. This offer he refused, claiming that according to the terms of the agreement he was entitled to full wages. The employers maintained that the agreement terminated when the subsequent claim for compensation was made and that the workman was relegated to his rights under the act. It was held that the agreement terminated on the recurrence of total incapacity and the claim for compensation being made, and did not afterwards revive.<sup>50</sup>

In another case a miner who had injured one eye so that the use of it was practically destroyed was receiving compensation when his employers offered him work in the coal face. The miner refused although he was physically able to do the work and on review the court held that this was not quite "suitable employment" within the meaning of the act on the grounds (1) that there was some appreciable increase of peril to the remaining eye, and if injuries generally in working at the coal face, and (2) that the consequences of injury to the remaining eye of a one-eyed man were far more serious.<sup>51</sup>

Where the light work is furnished at another place so that the workman must pay something for trans-

549; *McNamara v. Burt*, 4 B. W. C. C. 151; *Anglo-Australia Steam Navigation Co. v. Richards*, 4 B. W. C. C. 247.

<sup>50</sup> *Branford v. North Eastern R. Co.*, 4 B. W. C. C. 84.

<sup>51</sup> *Eyre v. Houghton Colliery Co.*, 3 B. W. C. C. 250.

portation, the adjustment of the compensation should include these added expenses.<sup>52</sup>

The test of simple inability to get work on account of the labor market is wrong; the right test is inability to get work on account of the disability. This was the principle announced in a case where an injured workman in receipt of part wages and reduced compensation was dismissed by his employer owing to slackness of work and he applied for a restoration of full half wages.<sup>53</sup>

**§ 533. Effect of bona fide efforts to obtain employment.**—If a man has unsuccessfully made reasonable bona fide efforts to obtain employment at work which he is physically capable of performing he is not able to earn anything.<sup>54</sup>

**§ 534. Diminution in earnings of injured employé owing to general fall in wages.**—Where the injured employé is afterwards accepted in employment by his master in a different capacity but for the same wages he had earned before the accident, the employé may not claim compensation for the reduction in his wages owing to a general fall in wages. It is clear that the change in wages in such a case is not to be attributed to any change in the capacity of the workman to earn wages. "It is plain that when he had so far recovered from the accident as to be able to work and the appellants had again employed him in a different capacity at the same rate of wages, he could not, and in fact he did not claim compensation, and that that position of matters continued for eight years. Now by the shifting of the rate of wages owing to economic causes, and not because of change in his capacity to earn wages, his earn-

<sup>52</sup> *Taff Vale R. Co. v. Lane*, 3 B. W. C. C. 297.

<sup>53</sup> *Dobby v. Pease*, 2 B. W. C. C. 370.

<sup>54</sup> *Clark v. Gas Light, etc., Co.*, (1905) 21 T. L. R. 184, 7 W. C. C. 119.

ings have diminished. I am of opinion that that is not a ground on which the sheriff can award compensation. The respondent is in no worse a position than he would have been in if he had never been injured, but had continued throughout to be employed as a shifter. Further, if instead of falling, the rate of wages had risen, as they might have done and may still do, it is plain that the respondent would have reaped the benefit, and, in like manner, the rate of wages having fallen, I think the loss must fall upon him. Of course if the fall in wages had been due to supervening incapacity that would have been a totally different matter.”<sup>55</sup>

**§ 535. Deduction of hospital fees.**—Under the British act the employer may deduct from the compensation the amount paid by him for hospital attendance. This principle was announced in a case where an injured workman was treated in a hospital where the fees were paid by the employers and it was held that the payment was clearly a benefit to the workman within the meaning of the compensation act.<sup>56</sup>

**§ 536. Deduction of compensation while injured workman in prison.**—In a case where an injured workman receiving weekly compensation was convicted and sentenced to imprisonment for a specified time and the employer claimed that the incapacity to earn wages was no longer due to the accident and claimed a suspension of the weekly payments, the court held that the workman was not entitled to receive his entire weekly earnings while in prison but that a portion of the compensation should be paid for the support of his children during the time of his incarceration.<sup>57</sup>

<sup>55</sup> *Merry v. Black*, 46 Scotch L. R. 812, 2 B. W. C. C. 372.

<sup>56</sup> *Suleman v. The Ben Lomond*, 126 L. T. J. 308, 2 B. W. C. C. 499.

<sup>57</sup> *Clayton v. Dobbs*, 2 B. W. C. C. 488.

**§ 537. Effect of acceptance of relief funds for injury.**—The fact that an injured workman has received payment from a fund formed for relief in time of personal injury by accident, sickness or burial to which his employers materially contributed before the accident is not an element for consideration in assessing the amount of compensation. A workman's compulsory contributions to such a fund, which are deducted from his wages, do not diminish the amount of his weekly earnings.<sup>58</sup>

**§ 538. Deductions from compensation to dependents.**—It may be observed generally that dependents are entitled to compensation although weekly payments may have been made to the deceased under the compensation act.<sup>59</sup>

But the dependent in such a case must suffer a deduction of the sum paid to the workman in his lifetime.<sup>59a</sup> And the wages paid by the deceased to an assistant should be deducted in computing the compensation to be paid to his dependent.<sup>60</sup>

Where the dependent is in receipt of poor relief this sum should also be deducted.<sup>61</sup>

**§ 539. Consideration of profits of business carried on by injured workman.**—Upon a proper application for termination or diminution of award the court should consider the average amount which the workman is earning in a business carried on by himself after receiving the injury.<sup>62</sup>

<sup>58</sup> Bullen v. London, etc., Tramway Co., 121 L. T. J. 415, 8 W. C. C. 103.

<sup>59</sup> O'Keefe v. Lovett, 4 W. C. C. 109.

<sup>59a</sup> Williams v. Vauxhall Colliery Co., 23 T. L. R. 591, 9 W. C. C. 120.

<sup>60</sup> McKee v. Stein, 47 Scotch L. R. 39, 3 B. W. C. C. 544.

<sup>61</sup> Byles v. Pool, 126 L. T. J. 286, 2 B. W. C. C. 484.

<sup>62</sup> Norman v. Walder, (1904) 2 K. B. 27, 90 L. T. 531, 6 W. C. C. 124.



An injured workman before the accident earned an average of £94 per annum, i. e. £1 16s. 6d. per week. After the accident he purchased a public house for £100, and deducting interest on capital and all expenses he still made a net profit of £98. On an application to review the employers successfully contended that though the workman had not recovered from his injuries the incapacity to earn had ceased, as he was earning more since the accident than before. It was held that the test was not the man's profits, but the value of the work done had it been offered as services in the open market.<sup>63</sup>

**§ 540. Effect of receiving same or increase in earnings after injury.**—The fact that a workman earns more after the accident than he did before the accident does not give the employer a right to have the payment of compensation ended.<sup>64</sup>

He may, however, have the compensation reduced.<sup>64a</sup>

The amount of compensation recoverable is not limited to half the difference between the earnings before and after the accident.<sup>65</sup>

One of the cases declares bad a rule, to award as compensation,—unless there be some reason to the contrary,—fifty per cent. of the previous average weekly earnings, but so that such compensation when added to the average amount that the injured workman was able to earn after the accident, does not exceed the whole of the previous average weekly earnings.<sup>66</sup>

Where the wages are the same after the accident as before, the workman is not entitled to compensation until he has actually suffered loss through the disability.<sup>67</sup>

<sup>63</sup> Paterson v. Moore, 3 B. W. C. C. 541, 47 Scotch L. R. 30.

<sup>64</sup> Wilson v. Jackson, 7 W. C. C. 122.

<sup>64a</sup> Auley v. Neale, 9 W. C. C. 34.

<sup>65</sup> Jones v. London, etc., R. Co., 4 W. C. C. 140.

<sup>66</sup> Webster v. Sharp, 7 W. C. C. 118.

<sup>67</sup> Chandler v. Smith, 1 W. C. C. 19; Cammell v. Platt, 2 B. W.

And this is the case though the wages are earned in another line of employment.<sup>68</sup>

§ 541. **Probable earnings of infant.**—The British act of 1906 contains the provision that where the workman was at the date of the accident under twenty-one years of age, and the review of the compensation takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding 50 per cent. of the weekly sum which the workman would probably have been earning at the date of the review, if he had remained uninjured but not in any case exceeding one pound.<sup>69</sup>

In one of the cases an infant workman was injured and sustained a rupture and after a few weeks he returned to his former work wearing a truss. A year later his employer applied to terminate the liability and proved that he was earning as much as before the accident. It was held that the fact that an infant workman is earning the same wages as before the accident is not necessarily conclusive that the employers are entitled to have the compensation terminate, but the arbitrator should determine whether the earning capacity was the same as it would have been had he not been injured.<sup>70</sup>

Consideration may be given to the fact that the minor might earn in another class of employment. Thus an infant skilled laborer, during a slack time took an unskilled employment at a low rate and was injured while in this employ and received compensation based on the wages he was receiving when injured. On an application to review, he claimed to be entitled to com-

C. C. 368; see also *Humphreys v. London Electric Lighting Co.*, 4 B. W. C. C. 275.

<sup>68</sup> *Cammell v. Platt*, 2 B. W. C. C. 368.

<sup>69</sup> *Edwards v. Alyn Tin Plate Co.*, 3 B. W. C. C. 141.

<sup>70</sup> *Bowhill Coal Co. v. Malcolm*, 47 Scotch L. R. 449, 3 B. W. C. C. 562.

compensation based on the weekly sum he would probably have been earning at his skilled work. It was held that "workman" in the act means the "individual workman," and in estimating the probable earnings of this workman regard may be had to his power to earn money in another employment and in another class of employment than that in which he was working at the time he was injured.<sup>71</sup>

**§ 542. Injuries after brief employment.**—Where the employé has worked for the same employer for a period less than two weeks, the weekly earnings upon which the amount of compensation is calculated, should be taken to be the hypothetical sum which the workman would, but for the accident, have probably received in the course of a week from the employer in whose service he met with the accident.<sup>72</sup>

In one of the cases it appeared that a trade or working week ended on Thursday night. A man worked six days, from Wednesday to Tuesday, Sunday being excluded. There was evidence that the employment would but for the accident, have continued. It was held that the amount earned in the six days might be considered to be his weekly earnings.<sup>73</sup>

There is no inference of law that a casual laborer employed by the hour will continue in the employment longer than the conclusion of any given hour.<sup>74</sup>

**§ 543. Death of injured workman while receiving compensation for previous injury.**—Where an injured employé on compensation returns to light work because of inability to perform his duty in the employment in which he was injured, the compensation of the depend-

<sup>71</sup>*Evans v. Vickers*, (1910) 1 K. B. 554; 102 L. T. 199, 3 B. W. C. C. 126; affirmed (1910) A. C. 444, 3 B. W. C. C. 403, 26 T. L. R. 548; (1910), W. N. 161.

<sup>72</sup>*Ayres v. Buckeridge*, 85 L. T. 472, 4 W. C. C. 120.

<sup>73</sup>*Walters v. Clover*, 18 T. L. R. 60, 4 W. C. C. 138.

<sup>74</sup>*Case v. Colonial Wharves*, 53 W. R. 514, 8 W. C. C. 114.

ent is based on the wages received in the light employment and without regard to the compensation which the deceased workman was receiving. This was the case where a collier at the time of his death was employed at light work in the mine as a battery carrier. He had previously met with an accident in the mine and was at the time of the second accident, which proved fatal, receiving some compensation in addition to the wages for his light work. It was held that the compensation which the deceased workman was receiving could not be taken into account in estimating the earnings in the employment and that the deceased workman had lost his old grade as a collier and belonged in the grade of battery carrier.<sup>75</sup>

**§ 544. Amount of compensation where dependent illegitimate.**—The compensation awarded an illegitimate dependent cannot exceed the amount the deceased was compelled by law to pay for his support. The fact that the act prescribes a maximum amount to be paid to dependents does not require that this amount should be awarded in every case, but only that reasonable compensation within that limit should be paid. It follows that where the maximum amount has been awarded an illegitimate dependent it will be reduced where the award is in excess of the amount the deceased was compelled to pay for the support of the child.<sup>76</sup>

**§ 545. Effect of certificate of termination of incapacity.**—Though the medical referee may certify that incapacity has ceased and compensation thereupon terminates, this certificate is not a bar to application for arbitration where the incapacity returns and this is the case though the workman acquiesced in the report of the medical referee.<sup>77</sup>

<sup>75</sup> Gough v. Crawshay, 1 B. W. C. C. 374.

<sup>76</sup> Gourlay v. Murray, 45 Scotch L. R. 577, 1 B. W. C. C. 335.

<sup>77</sup> United Collieries Co. v. King, 47 Scotch L. R. 41, 3 B. W. C. C. 546.

## CHAPTER XXXII.

### PROCEDURE UNDER BRITISH ACT.

- | Sec.   | Sec.  |
|--|---|
| 546. Election of remedies and estoppel.                                      | 558. Burden of proof on application to reduce compensation.           |
| 547. Necessity of dispute to give arbitrator jurisdiction.                   | 559. Burden of proof that injury was result of accident.              |
| 548. Agreement to pay compensation in lieu of submission to arbitration.     | 560. Admissibility of declarations of injured workman.                |
| 549. Rights of workmen against liability insurance company.                  | 561. Conclusiveness of certificate of medical referee.                |
| 550. Recovery of over-payments made by employer.                             | 562. Submission to medical referee.                                   |
| 551. Letters of administration to injured workman on estate of employer.     | 563. Recovery from injury a question of fact.                         |
| 552. Guardian ad litem for incompetent dependent.                            | 564. Procedure for apportionment among dependents.                    |
| 553. Notice of claim for injury.   | 565. Right to make award to terminate at a fixed date.                |
| 554. Necessity of stating amount of claim in notice.                         | 566. Nominal award to keep proceedings alive.                         |
| 555. Amendment of pleadings.   | 567. Grant of new trial by arbitrator.                                |
| 556. Demand of workman that his medical attendant be present at examination. | 568. Employer bound by application for review.                        |
| 557. Demand that medical examination take place in attorney's office.        | 569. Revision of award on change of circumstances of injured workman. |
|  | 570. Appeal.  |
|  | 571. Costs and fees.  |

§ 546. Election of remedies and estoppel.—The British act allows an injured workman who fails in his common-law action against his employer to then make claim for compensation under the act, but this does not authorize a common-law action for damages on a

failure to obtain compensation under the act. The workman is estopped.<sup>1</sup>

The award of compensation likewise operates to estop the workman from maintaining an action against a third person responsible for the injury.<sup>2</sup>

So there was a recovery of damages which operated as an estoppel to claim compensation from the employer where the employé entered into an agreement with a third party responsible for his injury for the payment of his wages during his incapacity.<sup>3</sup>

The question whether there has been a bona fide release from liability may be considered, and if it is found that the release was obtained by fraud it will not bind the workman.<sup>4</sup>

Where the release is obtained from an infant it will be set aside where not beneficial to the infant.<sup>5</sup>

Where a workman who has unsuccessfully sued his employers for damages desires to have compensation for his injury assessed under the compensation act of 1906, the motion for assessment must be made before the verdict is entered and if not so made it will be too late.<sup>6</sup>

**§ 547. Necessity of dispute to give arbitrator jurisdiction.**—The rule is laid down by the British Court of Appeal that there must be a dispute between the workman and his employer as to the matters mentioned in the statutes before an arbitrator has jurisdiction to entertain proceedings under the act.<sup>7</sup>

<sup>1</sup> *Burton v. Chapel Coal Co.*, 46 Scotch L. R. 375, 2 B. W. C. C. 120; but see *Beckley v. Scott*, (1902) 2 Ir. L. R. 514.

<sup>2</sup> *Mahomed v. Maunsell*, 1 B. W. C. C. 269.

<sup>3</sup> *Page v. Burtwell*, 1 B. W. C. C. 267.

<sup>4</sup> *Huckle v. London County Council*, 3 B. W. C. C. 536.

<sup>5</sup> *Ford v. Wren*, 5 W. C. C. 48; *Stephens v. Dunbridge Ironworks Co.*, 6 W. C. C. 48.

<sup>6</sup> *Slavin v. Train*, 49 Scotch L. R. 93.

<sup>7</sup> *Dunlop v. Rankin*, 39 Sc. L. R. 146; *Mercer v. Hilton*, 3 B. W.

In case the employer has shown a willingness to give all that the act requires, an implied agreement exists, and this implied agreement may be registered.<sup>8</sup>

No costs may be taxed against the employer where he does not dispute his liability and pays the compensation into court.<sup>9</sup>

Where the applicant asks for a certain sum for a period during which incapacity admittedly existed and the employers, whilst admitting the claim, ask for a declaration that the incapacity has ceased as from that time, the sheriff must decide this question, as it is a dispute between the parties as to the liability to pay compensation.<sup>10</sup>

**§ 548. Agreement to pay compensation in lieu of submission to arbitration.**—A valid agreement for compensation is a bar to proceedings in arbitration.<sup>11</sup>

Where such an agreement has been entered into between the parties, and the memorandum is submitted to the judge by the registrar, the judge has no power to do more than declare whether or not the memorandum is one which ought to be recorded and he has no power to make any substantive order dealing with the whole matter, or to treat the agreement as a submission by the employer to pay any sum which the judge under the circumstances may think proper. In other words the agreement is not a consent to submit to arbitration.<sup>12</sup>

In one of the cases there was an agreement entered into between the employer and the employé, by which the employer agreed to pay compensation during the C. C. 6; *Field v. Longden*, (1902) 1 K. B. 47; *Caledon Shipbuilding Co. v. Kennedy*, 43 Scotch L. R. 146.

<sup>8</sup> *Jones v. Great Central R. Co.*, 4 W. C. C. 23.

<sup>9</sup> *Lancaster v. Midland R. Co.*, 1 B. W. C. C. 418.

<sup>10</sup> *Bowhill Coal Co. v. Malcolm*, 46 Scotch, L. R. 354.

<sup>11</sup> *Busby v. Richardson*, 3 W. C. C. 54.

<sup>12</sup> *Hall v. Furness*, 3 B. W. C. C. 72; *Mortimer v. Secretan*, 100 L. T. 721, 2 B. W. C. C. 446.

time of the incapacity of the workman. The employer ceased the weekly payment under this agreement and thereupon the workman applied for leave to issue execution. It was held proper to allow the employer to show that the incapacity ceased when the payments were discontinued and that no further compensation could be demanded.<sup>13</sup>

**§ 549. Rights of workmen against liability insurance company.**—It is to be noted at the outset that there is no privity of contract between an employé and a liability insurance company.<sup>14</sup>

In any event the insurance company will not have a greater liability to a workman than it has to the employer himself and a condition in the policy precedent to the claim by the employer must be fulfilled before the workman can claim.<sup>15</sup>

The employé can not demand a payment into court unless there is an admission of liability on the part of the insurer or a finding by a competent tribunal.<sup>16</sup>

**§ 550. Recovery of over-payments made by employer.**—It is clear that an employer who has over-paid an injured workman may demand a restoration of the over-payment, but it would seem under the English act that the employer could recover the amount of the over-payment only by an action brought for that purpose and that he could not treat such over-payments as payments made on account of future weekly payments of compensation.<sup>17</sup>

<sup>13</sup>Ibrahim Said v. Welsford, 3 B. W. C. C. 233.

<sup>14</sup>Disourdi v. Sullivan Group Min. Co., 15 B. C. 305, 4 B. W. C. C. 462; see also Disourdi v. Sullivan Min. Co., 14 B. C. 273, 2 B. W. C. C. 514.

<sup>15</sup>King v. Phoenix Insurance Co., 3 B. W. C. C. 442.

<sup>16</sup>Disourdi v. Sullivan Group Min. Co., 14 B. C. 256, 2 B. W. C. C. 508.

<sup>17</sup>Hosegood v. Wilson, 4 B. W. C. C. 30; Muller v. Batavier Line, 126 L. T. J. 96, 2 B. W. C. C. 495.



**§ 551. Letters of administration to injured workman on estate of employer.**—On the death of an employer liable to pay compensation to an injured employé such employé may take out letter of administration on the estate where persons entitled to take out such letters refuse to do so.<sup>18</sup>

**§ 552. Guardian ad litem for incompetent dependent.**—Where the dependent entitled to compensation is incompetent the court should appoint a guardian ad litem to appear for him in the proceedings. In one case proceedings under the act of 1906 were brought on behalf of a daughter, who had been residing with the deceased workman and acting as a housekeeper, and his wife, who was an inmate of an insane asylum, and the matter was settled as between the employer and the daughter, by the employer agreeing to pay a certain amount which was lodged in court, and, no guardian ad litem for the wife having been appointed, an application was made by the superintendent of the asylum of which the wife was an inmate to have the said sum apportioned between the daughter and the widow on the basis of both of them being dependents of the deceased. It was held that as none of the parties were before the court there was no jurisdiction to make an order.<sup>19</sup>

**§ 553. Notice of claim for injury.**—Where the law does not fix a definite time for filing the claim for compensation it is the duty of the injured person to file the claim as soon as practicable after the accident. There was a failure to file as soon as practicable where a workman saw his employer twice within two weeks after the accident but did not mention the accident, though he claimed he sent notice to the master by a messenger on the following day and some three weeks afterward sent a notice by registered post, but the employer

<sup>18</sup> *In re Byrne*, 44 Ir. L. T. 98, 3 B. W. C. C. 591.

<sup>19</sup> *Kerr v. Stewart*, 43 Ir. L. T. 119, 2 B. W. C. C. 454.

denied having received either of these notices, but did receive a notice from the attorney of the injured workman a month after the injury was received.<sup>20</sup>

Where the notice of the accident is not served as soon as practicable the workman has the burden of showing that the employer was not prejudiced by the delay.<sup>21</sup>

And generally speaking this burden of proof of lack of prejudice is on the workman, where the notice in any respect has not been given agreeably to the provisions of the act.<sup>22</sup>

It has been held that a mere notice of injury is not a claim for compensation or a proceeding to recover compensation.<sup>23</sup>

In one of the cases an injured workman was waited upon by an agent of an insurance company, with whom his employer was insured, who endeavored to get him to accept compensation and by another party who advised him not to accept compensation but to claim damages. The workman eventually decided not to accept compensation and put the matter into a lawyer's hands, who, however, carried nothing to conclusion with the result that the six months allowed by the act for making a claim expired. In an arbitration at the instance of the workman the arbitrator found that the workman was barred from prosecuting his claim and dismissed the application. It was held that as no claim had been made within the six months, the application was rightly dismissed.<sup>24</sup>

<sup>20</sup> Leach v. Hickson, 4 B. W. C. C. 153.

<sup>21</sup> Burrell v. Holloway, 4 B. W. C. C. 239; Hughes v. Coed Talon Colliery Co., 100 L. T. 555, 2 B. W. C. C. 159; Tibbs v. Watts, 2 B. W. C. C. 164; Leach v. Hickson, 4 B. W. C. C. 153.

<sup>22</sup> Hancock v. British Westinghouse Electric Co., 3 B. W. C. C. 210; Roberts v. Crystal Palace Football Club, 3 B. W. C. C. 51.

<sup>23</sup> Perry v. Clements, 3 W. C. C. 56; Johnson v. Wootton, 4 B. W. C. C. 258.

<sup>24</sup> Devons v. Anderson, 48 Scotch L. R. 187, 4 B. W. C. C. 354.

The employer is prejudiced by a delay which causes him to lose his right to indemnity against an insurance company.<sup>25</sup>

It is an excuse for failure to give timely notice that the injury received did not cause disability until some time after the accident.<sup>26</sup>

So it has been held a sufficient excuse that the applicant was abroad at the time of the death of the workman and returned as soon as possible and after returning had been wrongfully advised as to his legal rights.<sup>27</sup>

Ignorance of the law is not generally an excuse for failure to give notice.<sup>28</sup>

The law excuses a mistake but ignorance of the law is not a mistake. "A mistake means that a man takes a wrong view as to the construction or effect of an act of Parliament, if it be a mistake of law. A mistake of fact may be that the notice is given to some person whom the workman believed to be an agent or a person entitled to receive the notice when he was not such. But 'mistake' is not identical with 'ignorance.' That is really what the argument for the respondent means. Then is it a 'reasonable cause?' Can it be a reasonable cause for a man not giving a notice, that he was not aware of the act of Parliament at all? In my opinion it is not. I think that these words are intended to meet an entirely different class of case. If, for instance, the employer has been paying compensation for a time without formal notice of claim, that may be a very good 'reasonable cause' why the workman did not make the formal claim within the six months. I merely give that as an illustration which is quite sufficient, I

<sup>25</sup>*Barker v. Holmes*, 6 W. C. C. 52, 117 L. T. J. 158; but see *Butt v. Gellyceidrim Colliery*, 3 B. W. C. C. 44.

<sup>26</sup>*Tibbs v. Watts*, 2 B. W. C. C. 164.

<sup>27</sup>*Smith v. Pearson*, 2 B. W. C. C. 468.

<sup>28</sup>*Roles v. Pascall*, 104 L. T. 298, 4 B. W. C. C. 148; *Bramley v. Evans*, 3 B. W. C. C. 34.

think, to satisfy the words of the section, and which is quite consistent with good sense.”<sup>29</sup>

In one of the cases a workman met with an accident on December 15, 1908, left work on the 24th, and went to hospital on January 2, 1909, where he had his foot amputated for tuberculosis of the joint, which he attributed to the accident. The respondents denied that the tuberculosis was due to the accident, and further said they had no notice of an accident until April 9, 1910, and that they were thereby prejudiced in their defense. It was held that that notice was not given as soon as practicable, and the employers were thereby prejudiced in their defense.<sup>30</sup>

The employer may waive his right to a written notice and there is such a waiver where after verbal notice the employer pays and the workman accepts a weekly payment during his incapacity.<sup>31</sup>

The statement in an answer that compensation has been paid the workman is equivalent to an admission that a claim has been made by the workman.<sup>32</sup>

**§ 554. Necessity of stating amount of claim in notice.**—It is not necessary that the injured workman in making his claim for compensation specify the amount claimed by him. “If the act had imposed upon a workman the duty of specifying the amount which he demanded when making the claim, it might have been thought unfortunate because it would often make the workman ask as a matter of prudence for the maximum he could possibly recover. \* \* \* It is enough that the act does not say the amount is to be specified, and with all respect he must construe it as it stands.”<sup>33</sup>

<sup>29</sup> Roles v. Pascall, 4 B. W. C. C. 148.

<sup>30</sup> Stronge v. Hazlett, 44 Ir. L. T. R. 10; 3 B. W. C. C. 581.

<sup>31</sup> Davies v. Point of Ayr Colliers Co., 2 B. W. C. C. 157.

<sup>32</sup> Lowe v. Myers, 95 L. T. 35, 8 W. C. C. 22.

<sup>33</sup> Thompson v. Gould, (1910) A. C. 409, 103 L. T. 81, 3 B. W. C. C. 392.

**§ 555. Amendment of pleadings.**—Under the British Columbia Act of 1902, the arbitrator has the same powers as to the amendment of pleadings in proceedings before him as a judge has in a civil action.<sup>34</sup>

Great strictness is not demanded in pleadings and documents in the arbitration proceeding.<sup>35</sup>

**§ 556. Demand of workman that his medical attendant be present at examination.**—A workman who refuses to be examined by the physician of his employer unless his own medical adviser is present can not be said to “refuse to submit himself to such examination or obstruct the same,” within the meaning of the British Compensation Act of 1906.<sup>36</sup>

But this demand for the presence of the personal medical adviser must be reasonable. Where the workman makes the demand when there are no special circumstances in the case calling for the presence of his medical attendant, his action may amount to a refusal within the meaning of the act.<sup>37</sup>

“The purpose of the examination is a legitimate and proper purpose. It is that the employer may obtain from a man of skill an opinion as to the workman’s then condition in order that he may consider whether he will be a party to a litigation, or will agree to give reasonable compensation without litigation to the man who has been injured. He ought, I think, to be allowed to do that—except in special circumstances—without being interfered with by anybody or watched by anybody, provided he employs a proper medical practitioner well qualified to make the examination and to supply him with a report.”<sup>38</sup>

<sup>34</sup> *Moore v. Crow’s Nest Pass Coal Co.*, 15 B. C. 391, 4 B. W. C. C. 451.

<sup>35</sup> *Lowe v. Myers*, 2 K. B. 265, 8 W. C. C. 22.

<sup>36</sup> *Devitt v. The Banbridge*, (1909) 2 K. B. 802, 2 B. W. C. C. 383.

<sup>37</sup> *Morgan v. Dixon*, 48 Scotch L. R. 296, 4 B. W. C. C. 363.

<sup>38</sup> *Morgan v. Dixon*, 48 Scotch L. R. 296, 4 B. W. C. C. 363.

**§ 557. Demand that medical examination take place in attorney's office.**—It would seem clear that an attorney's office is not, in ordinary circumstances, a proper place at which to hold a medical examination. Refusal to undergo an examination except in the presence of one's attorney may amount to a refusal to undergo the examination at all. This was the conclusion in a case where a workman in receipt of compensation under the act was required by his employers to submit himself for examination by a certain duly qualified medical practitioner and the workman refused to do so unless the examination was held at the office of his attorney or in the presence of his attorney. The employers repeated the request but stated that the medical adviser of the workman might attend at the examination. His refusal to submit to the examination unless these conditions were complied with was held a refusal to submit to examination within the meaning of the law.<sup>39</sup>

**§ 558. Burden of proof on application to reduce compensation.**—The employer has the burden of proof of his contention that circumstances have changed to such an extent as to warrant a reduction in the amount of the compensation.<sup>40</sup>

This is the rule where the employer contends that the incapacity has ceased,<sup>41</sup> or has decreased to such an extent as to permit the performance of light work.<sup>42</sup>

**§ 559. Burden of proof that injury was result of accident.**—The workman carries the burden of proving that his injury was caused by the accident and where he fails to do so, and where the evidence as to the cause of the injury is equally consistent with an accident, and

<sup>39</sup> Warby v. Plaistowe, 4 B. W. C. C. 67.

<sup>40</sup> Maundrell v. Dunkerton Collieries Co., 4 B. W. C. C. 76.

<sup>41</sup> Quinn v. McCallum, 40 Scotch L. R. 141, 2 B. W. C. C. 339.

<sup>42</sup> Proctor v. Robinson, 3 B. W. C. C. 41.

with no accident, compensation may not be awarded him.<sup>43</sup>

**§ 560. Admissibility of declarations of injured workman.**—The statements made by an injured man as to his bodily or mental feelings are admissible, but those made as to the cause of his illness are not to be received in evidence.<sup>44</sup>

The rule applies to statements made by a deceased workman to a fellow workman as to the cause of his injury.<sup>45</sup>

But there is authority that a statement as to the cause of the accident made by the injured person to a physician may be received.<sup>46</sup>

**§ 561. Conclusiveness of certificate of medical referee.**—The English courts attach the greatest importance to a certificate of a medical referee on the question of restoration of the capacity of the injured workman. This was the conclusion in a case where employers applied to review payments under a registered agreement and put in evidence a certificate of a medical referee obtained in accordance with the compensation law as proof that the workman was fit to work. The workman tendered medical evidence in contradiction, but the court rejected it on the ground that the certificate was conclusive and this position was sustained by the reviewing court.<sup>47</sup>

An arbitration is not rendered incompetent by reason of the surgeon's certificate not being obtained or produced until after the commencement of arbitration proceedings.<sup>48</sup>

<sup>43</sup> *Banabas v. Bersham Colliery Co.*, 103 L. T. 513, 3 B. W. C. C. 216; *Thackway v. Connelly*, 3 B. W. C. C. 37.

<sup>44</sup> *Gilbey v. Great Western R. Co.*, 102 L. T. 202, 3 B. W. C. C. 135.

<sup>45</sup> *Penn v. Spiers*, 1 B. W. C. C. 401.

<sup>46</sup> *Wright v. Kerrigan*, 45 Ir. L. T. 82, 4 B. W. C. C. 432.

<sup>47</sup> *Sapcote v. Hancock*, 4 B. W. C. C. 184.

<sup>48</sup> *Taylor v. Burnham*, 2 B. W. C. C. 247.

**§ 562. Submission to medical referee.**—The County Court Judge, under the British Statute has the right to submit the question of injury to a medical referee in cases where the medical evidence is conflicting. He may make such submission in the case of a deceased workman although the statute seems to confine the matter of submission to referee to the case of injuries to living workmen.<sup>49</sup>

The County Court Judge, however, is not bound by the report of the referee but may exercise an independent judgment.<sup>50</sup>

**§ 563. Recovery from injury a question of fact.**—The question whether an injured workman has recovered sufficiently to warrant a reduction of the compensation is a question of fact and not one of law.<sup>51</sup>

In one of the cases the finger of an employé was injured and compensation was paid under a registered agreement. Some five months later, the workman admitted to the physician of his employer that he was able to return to work, but when the employers, three months thereafter applied to terminate the agreement, the finger was slightly tender. The arbitrator terminated the compensation and refused to make a suspensory award. The court held that the decision of the arbitrator was on a question of fact and there was evidence to support it.<sup>52</sup>

**§ 564. Procedure for apportionment among dependents.**—Where the amount of the compensation to be paid to dependents is agreed upon it is not necessary to make a request for arbitration, naming the employer as respondent, to enable such amount to be apportioned

<sup>49</sup> *Carolan v. Harrington*, (1911) 2 K. B. 733, 4 B. W. C. C. 253.

<sup>50</sup> *Quinn v. Flynn*, 44 Ir. L. T. 183, 3 B. W. C. C. 594.

<sup>51</sup> *Cunningham v. McNautgton*, 47 Scotch L. R. 781, 3 B. W. C. C. 577; *Leeds, etc., Canal Co. v. Hesketh*, 102 L. T. 663, 3 B. W. C. C. 301.

<sup>52</sup> *Goodall v. Kramer*, 3 B. W. C. C. 315.



among the dependents of the deceased, but the sum should be brought and lodged in the County Court to the credit of the applicant and the respondent.<sup>53</sup>

And this is the rule even where there are persons under disability among the dependents so that no absolute agreement can be reached, yet there can be a conditional agreement to be sanctioned by the proper court on their behalf. The employer after payment into court is freed from further responsibility.<sup>54</sup>

**§ 565. Right to make award to terminate at a fixed date.**—The court has no power to make an award terminable at a future date. The only power given the judge is to make the award during the incapacity of the workman.<sup>55</sup>

**§ 566. Nominal award to keep proceedings alive.**—Under the English act, a county court judge has jurisdiction to make a suspensory award, of, say, one penny a week, or a declaration of liability, it matters not which, for the purpose of keeping alive the workman's claim for compensation and the right to come back to the judge in the event of new circumstances arising which render such a course appropriate.<sup>56</sup>

The entry of such an order is not obligatory. Whether it is to be entered in any case would seem to be a question of fact with which a reviewing court will not interfere.<sup>57</sup>

And generally, where the court has jurisdiction to make an order terminating compensation and he does terminate it on medical evidence which shows a restoration to full capacity, the court is not bound to make a

<sup>53</sup> *Harlan v. Radcliffe*, 43 Ir. L. T. 166, 2 B. W. C. C. 374.

<sup>54</sup> *Rhodes v. Soothill Wood Colliery Co.*, 100 L. T. 15, 2 B. W. C. C. 377.

<sup>55</sup> *Baker v. Jewell*, 3 B. W. C. C. 503; *Allan v. Spowart*, 43 Scotch L. R. 599.

<sup>56</sup> *The Tynron v. Morgan*, 100 L. T. 461, 2 B. W. C. C. 406.

<sup>57</sup> *Emerson v. Donkin*, 4 B. W. C. C. 74.

nominal award of compensation containing a declaration of liability.<sup>58</sup>

On an application to terminate the payment of a nominal award, the question is not whether the employers are paying the workman or should pay him at the time of the application the same wages as before the accident, but whether the man is left in such a condition that in the open market his earning capacity may in the future be less than it was before the accident as a result of the accident.<sup>59</sup>

A suspensory award should be made where, though the man can work, yet the bad effects resulting from the accident still remain.<sup>60</sup>

**§ 567. Grant of new trial by arbitrator.**—An arbitrator has no power to grant a rehearing after he has made an award. He sits as an arbitrator in the proceedings and not as a judge.<sup>61</sup>

**§ 568. Employer bound by application for review.**—The employer cannot have relief which he failed to demand in his application for review. Accordingly, a court is within jurisdiction to find that a workman has recovered from an accident at a time previous to that suggested in the application.<sup>62</sup>

So weekly payments may be varied as from the date of the application but not from an earlier date.<sup>63</sup>

And generally, on a simple application to review a weekly payment and to terminate payment on the ground that the incapacity of the workman has ceased and it is not competent for the court to go outside the

<sup>58</sup> *Cranfield v. Ansell*, 4 B. W. C. C. 57.

<sup>59</sup> *Birmingham Cabinet Co. v. Dudley*, 102 L. T. 619, 3 B. W. C. C. 169.

<sup>60</sup> *Griga v. The Harelda*, 3 B. W. C. C. 116.

<sup>61</sup> *Mountain v. Parr*, 80 L. T. 342, 1 W. C. C. 110.

<sup>62</sup> *Upper Forest, etc., Tin Plate Co. v. Thomas*, 2 B. W. C. C. 414.

<sup>63</sup> *Donaldson v. Cowan*, 46 Scotch L. R. 920, 2 B. W. C. C. 390.

application and make an order terminating liability from an antecedent date.<sup>64</sup>

**§ 569. Revision of award on change of circumstances of injured workman.**—It is specially provided by the British act that any weekly payment may be reviewed at the request either of the employer or the workman and on such review the compensation may be ended, diminished or increased, subject to the maximum provided by the act. But the amount of the compensation will not be considered unless circumstances have altered since the last award was made. If this were the case the review would amount to a rehearing of the arbitrator and this is not permitted.<sup>65</sup>

The original finding as to the physical condition of the workman is not *res judicata*.<sup>66</sup>

“The doctrine of *res judicata* does not apply to a decision as to the amount of weekly payment to the injured workman when it is made the subject of an application to review, although it may apply to some of the facts proper to be considered on the occasion of such a review. The issue on such a review is the same issue as if it were an original award made at the date of the review, and the amount to be awarded is a payment which, in case of partial incapacity, must not exceed the difference between the amount of the average weekly earnings of a workman before the accident and the average weekly amount which he is earning, or able to earn, in some suitable employment or business at the date of the review, but is to bear such relation to the amount of such difference as may under the circumstances of the case appear proper.”<sup>67</sup>

<sup>64</sup> *Charing Cross, etc., R. Co. v. Boots*, 101 L. T. 53, 2 B. W. C. C. 385.

<sup>65</sup> *Crossfield v. Tanian*, 16 T. L. R. 476, 2 W. C. C. 141.

<sup>66</sup> *Mead v. Lockhart*, 2 B. W. C. C. 398; *Cawdor, etc., Collieries v. Jones*, 3 B. W. C. C. 59; *Radcliffe v. Pacific Steam Nav. Co.*, 102 L. T. 206, 3 B. W. C. C. 185.

<sup>67</sup> *Radcliff v. Pacific Steam Nav. Co.*, 3 B. W. C. C. 185

In one of the cases a collier lost the sight of an eye by accident, and compensation was paid for two and a half years under an agreement. Another agreement reducing the amount of compensation was then entered into in March, 1908. In January, 1909, the employers applied to further reduce the compensation. The workman contended that the amount of his incapacity had been settled once and for all by the agreement of March, 1908. The judge held that the man was fit for his work as a miner, and reduced the compensation to 1*d.* a week. It was held there was evidence before the County Court Judge with regard to the man's condition on which he was entitled to come to such a decision. The workman's contention that his condition was *res judicata*, and that no change of circumstance had taken place was bad.<sup>68</sup>

On a review in medical evidence as to new tests and observation is admissible to show a change in the condition of the workman.<sup>69</sup>

There is a decision which denies the right to diminish the compensation on the ground that increased age has lessened the capacity of the workman to earn the wages he was receiving at the time of the injury.<sup>70</sup>

**§ 570. Appeal.**—Orders and decrees not appealed from are final.<sup>71</sup>

On appeal the court will not consider questions which were not raised in the court below.<sup>72</sup>

Neither will the court review a question which is purely one of fact.<sup>73</sup>

<sup>68</sup>Cawdor, etc., Collieries Co. v. Jones, 3 B. W. C. C. 59.

<sup>69</sup>Sharman v. Holiday, 90 L. T. 46.

<sup>70</sup>Smith v. Hughes, 8 W. C. C. 115.

<sup>71</sup>Nicholson v. Piper, 96 L. T. 75, 9 W. C. C. 123, 128, (1907) A. C. 215, 97 L. T. 119.

<sup>72</sup>Payne v. Clifton, 3 B. W. C. C. 439.

<sup>73</sup>Gane v. Nortonhill Colliery Co., 100 L. T. 979, 2 B. W. C. C. 42; Rayman v. Fields, 102 L. T. 154, 3 B. W. C. C. 123; Turner v. Bell, 4 B. W. C. C. 63; Moss v. Akers, 4 B. W. C. C. 294.

But the question on appeal is not one purely of fact where the facts have been found by the court below and the question is whether the right conclusion has been deduced from such facts. In other words, the question in this situation is whether or not the lower court has misdirected himself.<sup>74</sup>

An appeal will lie from an order as to costs which is made a part of the award.<sup>75</sup>

In a case where a judge does not deal with the matter as an arbitrator, but as a judge, an appeal will lie from him in the action in his capacity as judge.<sup>76</sup>

In one of the cases an agreement for the redemption of a weekly payment by a lump sum was sent to a registrar to record. It appearing inadequate, the registrar under the powers given him under the compensation law referred it to the judge. The judge holding that the sole question for him to decide was whether the agreement had in fact been made, declined to consider the question of adequacy.<sup>77</sup>

It was held by the Court of Appeal that the case must go back for decision on the question of adequacy.

**§ 571. Costs and fees.**—On the termination of compensation on application of the employer the court may at his discretion award costs to the employer.<sup>78</sup>

In British Columbia a judge of the Supreme Court on a special case under the compensation act has jurisdiction to deal with the costs of the special case.<sup>79</sup>

Under this latter act an injured workman brought an action against his employers at common law and under

<sup>74</sup> *Gane v. Nortonhill Colliery Co.*, 100 L. T. 979, 2 B. W. C. C. 42.

<sup>75</sup> *Beadle v. The Nichols*, 101 L. T. 586, 3 B. W. C. C. 102.

<sup>76</sup> *Granich v. British Columbia Sugar Co.*, 15, R. C. 193, 4 B. W. C. C. 452.

<sup>77</sup> *The Segura v. Blampied*, 4 B. W. C. C. 192.

<sup>78</sup> *Cornish v. Lynch*, 3 B. W. C. C. 343.

<sup>79</sup> *Darnley v. Canadian Pacific R. Co.*, 15 B. C. 324, 4 B. W. C. C. 449.

the employers liability act asking in the alternative for the assessment of compensation under the compensation act. The employers filed an admission of liability under the latter act and made an offer of compensation at the rate of \$10 per week. The action failed and the compensation was assessed at \$9 per week. It was held that the judge had a discretion as to the costs and in this case the workman should have the costs of the assessment of compensation under the compensation act.<sup>80</sup>

Where an applicant appeals unsuccessfully against the amount of compensation awarded him, the costs of appeal will be set off against his costs in the court below.<sup>81</sup>

It is open for the officer of the county court to tax the costs of an arbitration immediately after the hearing and in such a case the amount of the taxed costs may be inserted in the award.<sup>82</sup>

<sup>80</sup> *Wilson v. Kelly*, 3 B. W. C. C. 599.

<sup>81</sup> *Case v. Colonial Wharves*, 53 W. R. 514.

<sup>82</sup> *Gardner v. Cox*, 3 B. W. C. C. 245.

## CHAPTER XXXIII.

### THE BRITISH WORKMEN'S COMPENSATION AND NATIONAL INSURANCE ACT, 1911.

Sec.	Sec.
572. Scope and nature of the act.	577. Text of British compensation act of 1906.
573. Construction of the act.	
574. Investment of sums paid on death claims.	578. National Insurance Act 1911 —David Lloyd George Insurance Act.
575. Actions independent of act.	
576. Notice of accident.	

**§ 572. Scope and nature of the act.**—The British government, after eight years' experience with the Compensation act of 1897 as amended in 1900, adopted a new compensation act in December, 1906, which became effective July 1, 1907. This act covers almost every kind of employment and applies to accidents occurring on the sea as well as on the land. The provisions of Acts of 1897 and 1900 included about 7,500,000 workmen while the Act of 1906 covers about 13,000,000.

A "workman," is defined in the act as "any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labor, clerical work, or otherwise," unless his annual wages are in excess of 250 pounds (\$1,216.63), but manual laborers are included whatever the amount of earnings may be. Persons engaged in certain "casual" employments are excluded. Persons, who perform labor upon articles in their own homes or other premises which are not under the control of the person for whom the work is done, are excluded. Members of the employer's family that dwell in his house are excluded, but domestic servants are included. A list of diseases incurred in the course of employment which has been en-

larged by orders of the secretary of state for the home department, dated May 22, 1907, and December 2, 1908, are classed and compensated as accidents.

Commutation of weekly payments in cases of permanent disability on the request of the employer is regulated by the new law which requires that the sum thus paid be sufficient to purchase through the Post Office Savings Bank a life annuity equal in amount to 75 per cent. of the annual value of the weekly payments. Commutation may be made at any time by the parties by agreement.

§ 573. **Construction of the act.**<sup>1</sup>—The terminology used in the Act of 1906 is substantially the same as that used in the Acts of 1897 and 1900, so that the decisions of the courts relating to the construction of these acts are applicable to the Act of 1906. For example, the expressions “accident” and “arising out of and in the course of the employment” are the same in both.

The Court of Appeals in construing the meaning of the word “accident” holds that the question as to whether or not any certain event was an accident or not within the meaning of the act is one of fact and not one of law; consequently the findings of the arbitrators in the cases arising under the act were approved, and the court did not attempt to reconcile them where they differed. This accounts for conflicting rulings in this connection in the earlier decisions. In 1903 the House of Lords finally decided the question of “accident” and “disease” in *Frenton v. Thorley & Co.*<sup>2</sup>

In this case it was said by Lord Shand: “The word ‘accident’ in the statute is to be taken in its popular and ordinary sense. I think it denotes or includes any unexpected personal injury resulting to the workman in

<sup>1</sup>See ante Chaps. XXIV et seq.

<sup>2</sup>(L. R. A. C. (1903) 443, 72 L. J. K. B. 787, 89 L. T. 314, 19 T. L. R. 684). In this case a workman in attempting to turn a wheel of a machine, ruptured himself by too great exertion.



the course of his employment from any unlooked for mishap or occurrence." Said Lord Lindley in the same case: "Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt would certainly be called an accident. The word 'accident' is also used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish careless from other unintended and unexpected events." This construction covers cases of injury caused by the malicious acts of another. For example, a locomotive engineer, who was struck by a missile thrown at his engine by a malicious or mischievous person, is entitled to compensation under the act.

It was held under the Act of 1897 that the infection with anthrax was caused by the "accidental alighting of a bacillus" on the person of the deceased and within the act but on the contrary lead poisoning, gradually contracted, "beat hand" and "beat knee" caused by the repeated jar or pressure of the affected parts, were not caused by accident within the meaning of the act. However, these injuries are all within the provision of the act of 1906 without regard to the element of accident. The phrase, "arising out of and in the course of the employment," according to the construction of the courts, contains two ideas, "arising out of," conveying the idea that the accident was due to some risk which is connected with the employment and to which the employé was exposed by reason of his employment, and "in the course of" only means that the accident must happen during the existence of the contract of employment. However, the employé is not required to be at work at the time. This

for example an employé who is on his master's premises a reasonable time before and after working hours, or during lunch hour according to custom, is held to be present in the course of his employment; but in going to different parts of his employer's work for his own purposes he is held to be without the provisions of the law. An employé who is instructed to use his employer's conveyance to reach the place of work is held to be within the act, but where he is given permission to use trains as a matter of personal convenience, he loses his right to compensation in case he is injured during such use.

An injury to be covered by the act need not be exclusively a consequence of the employment, as in the case of a workman who was employed to work near a hatchway into which he fell while suffering from an epileptic fit. It was held that his employment and not the fit was the proximate cause of his injury. Where a ticket collector jumped upon the foot board of a railway car to speak to a friend and was killed as he alighted, it was held that the injury did not arise out of his employment; similarly a workman went to a place different from that to which he was ordered, or repaired a machine which it was not his duty to repair.

An employé injured by an accident caused by the wrongful act of a fellow-workman will not be compensated unless the accident thus caused can be shown to be one of the inherent risks of the employment.

**§ 574. Investment of sums paid on death claims.—**The new law provides (as the old did not) that sums paid on account of death claims should be paid into the county court to be invested or paid out on its order for the benefit of the person entitled to the same. A similar rule pertains to weekly payments or lump sum commutations thereof, and the original apportionment of sums payable to each of the several dependents may be revised according as circumstances require.

**§ 575. Actions independent of act.**—The only case in which the employer may be proceeded against independently of the act is when the injury is the personal negligence or wilful act of the employer or his personal representative; double recovery is prohibited. An employé is denied compensation under the act in case the injury is caused by his wilful misconduct, unless the injury results in death or in serious and permanent disability. The “employer” as used in the act is the person who is primarily charged with the payment of compensation, even though the workman is under a contractor. In case of bankruptcy of the employer, the law provides not only that any insurance that he may have been carrying is secured to the injured workman but also compensation in any amount not exceeding 100 pounds (\$486.65) is made a preferred claim against the bankrupt.

**§ 576. Notice of accident.**—An injured workman in proceeding to recover the compensation provided by the act must give notice of the accident which caused his injury to his employer as soon as possible after its accident and before he has voluntarily left his employment. Claims must be submitted within six months after the happening of the accident causing the injury or death for which compensation is claimed.<sup>2a</sup>

**§ 577. Text of British compensation act of 1906.**—This act, found in Public General Acts, 6 Edw. VII, 1906, pp. 325-348, provides: 1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act.

<sup>2a</sup>For a further description of the nature and scope of the British Act see 24th Annual Report Bureau of Labor Chap. VI, pp. 1495 to 1508.

(2) Provided that—

(a) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed:

(b) When the injury was caused by personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act, except in case of such personal negligence or wilful act as aforesaid:

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(3) If any question arises in any proceedings under this act as to the liability to pay compensation under this act (including any question as to whether the person injured is a workman to whom this act applies), or as to the amount or duration of compensation under this act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this act, be settled by arbitration, in accordance with the second schedule to this act.

(4) If, within the time hereinafter in this act limited for taking proceedings, an action is brought to recover damages independently of this act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such

action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this act. In any proceeding under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deductions for costs, and such certificate shall have the force and effect of an award under this act.

(5) Nothing in this act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

2.—(1) Proceedings for the recovery under this act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that—

(a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defense by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

(b) the failure to make a claim within the period

above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

3.—(1) If the registrar of friendly societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favor of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the

scheme shall be substituted for the provisions of this act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this act shall apply notwithstanding any contract to the contrary made after the commencement of this act.

(2) The registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the registrar of friendly societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exist for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the registrar of friendly societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard

to the scheme as may be made or required by the registrar of friendly societies.

(7) The chief registrar of friendly societies shall include in his annual report the particulars of the proceedings of the registrar under this act.

(8) The chief registrar of friendly societies may make regulations for the purpose of carrying this section into effect.

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Provided that, where the contract relates to threshing, plowing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount



of any such indemnity shall in default of agreement be settled by arbitration under this act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

5.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not

exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this act.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependents of a miner, shall have the like priority as is conferred on wages of miners by section nine of that act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

6. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this act, the person by whom the compensation

was paid, and any person who has been called on to pay an indemnity under the section of this act relating to subcontracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this act.

7.—(1) This act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:

(a) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident.

(b) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant:

(c) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such deposition or certified copies thereof shall in any proceedings for en-

forcing the claim be admissible in evidence as provided by section six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly.

(d) In the case of the death of a master, seaman, or apprentice, leaving no dependents, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial.

(e) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice:

(f) Any sum payable by way of compensation by the owner of a ship under this act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this act relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury:

(g) Subsection (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependents of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen

months of the date at which the ship is deemed to have been lost with all hands:

(2) This act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits of the gross earnings of the working of such vessel.

(3) This section shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

8.—(1) Where—

(i) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the third schedule to this act and is thereby disabled from earning full wages at the work at which he was employed; or

(ii) A workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or

(iii) the death of a workman is caused by any such disease; and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependents shall be entitled to compensation under this act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment subject to the following modifications:

(a) The disablement or suspension shall be treated as the happening of the accident:

(b) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously

suffered from the disease, compensation shall not be payable.

(c) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due:

Provided that—

(i) the workman or his dependents if so required shall furnish that employer with such information as to the names and addresses of all other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and

(ii) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and

(iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this act for settling the amount of the compensation.

(d) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable.

(e) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

(f) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the secretary of state be referred to a medical referee, whose decision shall be final.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the third schedule to this act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) The secretary of state may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given:

Provided that—

(a) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine.

(b) Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the secretary of state may direct, a medical practitioner appointed by the secretary of state for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The secretary of state may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

(7) Where, after inquiry held on the application of any employers or workmen engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the secretary of state may, by provisional order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the secretary of state may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

(8) A provisional order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the bill confirming



any such order is pending in either House of Parliament, a petition is presented against the order, the bill may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills, and any act confirming any provisional order under this section may be repealed, altered, or amended by a provisional order made and confirmed in like manner.

(9) Any expenses incurred by the secretary of state in respect of any such order, provisional order, or confirming bill shall be defrayed out of moneys provided by Parliament.

(10) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this act.

9.—(1) This act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the royal household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The treasury may, by warrant laid before Parliament, modify for the purposes of this act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that act, or any such warrant, may frame schemes with a view to their being certified by the registrar of friendly societies under this act.

10.—(1) The secretary of state may appoint such legally qualified medical practitioners to be medical referees for the purposes of this act as he may, with the

sanction of the treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this act shall, subject to regulations made by the treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the second schedule to this act shall be paid out of moneys provided by Parliament in accordance with regulations made by the treasury.

11.—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made

in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this act as it applies to the detention of a ship under that act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

12.—(1) Every employer in any industry to which the secretary of state may direct that this section shall apply shall, on or before such day in every year as the secretary of state may direct, send to the secretary of state a correct return specifying the number of injuries in respect of which compensation has been paid by him under this act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the secretary of state may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds [\$24.33].

(2) Any regulations made by the secretary of state containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

13. In this act, unless the context otherwise requires,—

“Employer” includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

"Workman" does not include any person employed otherwise than by way of manual labor whose remuneration exceeds two hundred and fifty pounds [\$1,216.63] a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labor, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom or for whose benefit compensation is payable.

"Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister;

"Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

"Manager," in relation to a ship, means the ship's

husband or other person to whom the management of the ship is intrusted by or on behalf of the owner;

“Police force” means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force;

“Outworker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority;

“County court,” “judge of the county court,” “registrar of the county court,” “plaintiff,” and “rules of court,” as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer, and act of sederunt.

14. In Scotland, where a workman raises an action against his employer independently of this act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the Employers’ Liability Act, 1880, or alternatively at common law or under the Employers’ Liability Act, 1880, shall, notwithstanding anything contained in that act, not be removed under that act or otherwise to the court of session, nor shall it be appealed to that court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the second schedule to this act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this act shall apply.

15.—(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that act) existing at the commencement of this act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this act.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this act shall, if recertified by the registrar of friendly societies, have effect as if it were a scheme under this act.

(3) The registrar shall recertify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this act as to schemes.

(4) If any such scheme has not been so recertified before the expiration of six months from the commencement of this act, the certificate thereof shall be revoked.

16.—(1) This act shall come into operation on the first day of July, nineteen hundred and seven, but, except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this act.

(2) The Workmen's Compensation Acts, 1897, and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this act, except to the extent to which this act applies to those cases.

17. This act may be cited as the Workmen's Compensation Act, 1906.

FIRST SCHEDULE—SCALE AND CONDITIONS OF  
COMPENSATION.

(1) The amount of compensation under this act shall be—

(a) where death results from the injury—

(i) if the workman leaves any dependents wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds [\$729.98], whichever of those sums is the larger, but not exceeding in any case three hundred pounds [\$1,459.95], provided that the amount of any weekly payments made under this act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

(ii) if the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this act, to be reasonable and proportionate to the injury to the said dependents; and

(iii) if he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds [\$48.67];

(b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period dur-

ing which he has been in the employment of the same employer, such weekly payment not to exceed one pound [\$4.87];

Provided that—

(a) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

(b) as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings [\$4.87], one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings [\$2.43].

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—

(a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

(b) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average



weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident ;

(c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause ;

(d) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceedings under this act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall,

subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependents, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this act from one court to another, whether or not the court from which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is payable under this act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payments be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependent shall, in default of agreement, be settled by arbitration under this act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependent shall be settled by arbitration under this act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependents nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on

account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependents, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependents of any sum paid as compensation, or as to the manner in which any sum payable to any such dependent is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the national debt commissioners through the Post Office Savings Bank, or be accepted by the postmaster-general as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this act shall be paid out, except upon authority addressed to the postmaster-general by the treasury or, subject to regulations of the treasury, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(14) Any workman receiving weekly payments under this act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the secretary of state, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound [\$4.87] as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the secretary of state, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what

extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the secretary of state, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the treasury, as to the fee to be paid under this paragraph.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound [\$4.87].

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may,

on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the national debt commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

(21) Where a scheme certified under this act provides for payment of compensation by a friendly society,

the provisions of the proviso to the first subsection of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(22) In the application of this act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that act shall apply to money invested in the Post Office Savings Bank under this act.

#### SECOND SCHEDULE—ARBITRATION, ETC.

(1) For the purpose of settling any matter which under this act is to be settled by arbitration, if any committee, representative of any employer and his workmen, exists with power to settle matters under this act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the lord chancellor so authorizes, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this act, have all the powers of that judge.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this act; but a committee or an arbitrator may, if they or he think fit, submit any question of

law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this act, or where he gives any decision or makes any order under this act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the court of appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

(6) Rules of court may make provision for the appearance in any arbitration under this act of any party by some other person.

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the judge of the county court.

(8) In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

(9) Where the amount of compensation under this act has been ascertained, or any weekly payment varied, or any other matter decided under this act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any



party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

(a) no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and

(b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and

(c) the judge of the county court may at any time rectify the register; and

(d) where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement), as under the circumstances he may think just; and

(e) The judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependents, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(11) Where any matter under this act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

(12) The duty of a judge of county courts under this act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of

the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this act authorizes rules of court to be made, and also generally for carrying into effect this act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the lord chancellor, as provided by that section, shall have full effect without any further consent.

(13) No court fee, except such as may be prescribed under paragraph (15) of the first schedule of this act, shall be payable by any party in respect of any proceedings by or against a workman under this act in the court prior to the award.

(14) Any sum awarded as compensation shall, unless paid into court under this act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the secretary of state and the treasury, submit to a medical referee for report any mat-

ter which seems material to any question arising in the arbitration.

(16) The secretary of state may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisos (d) and (e) of paragraph (9) of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the secretary of state to be necessary or proper for the purposes of the order.

(17) In the application of this schedule to Scotland—

(a) "County court judgment" as used in paragraph (9) of this schedule means a recorded decree arbitral:

(b) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorized in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the court of session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to

be pronounced, and an appeal shall lie from either of such divisions to the House of Lords.

(c) Paragraphs (3), (4), and (8) shall not apply.

(18) In the application of this schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, and an appeal shall lie from the court of appeal to the House of Lords.

### THIRD SCHEDULE.

Description of disease.	Description of process.
Anthrax -----	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelae	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelae -----	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelae -----	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelae -----	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis -----	Mining.

Where regulations or special rules made under any act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the secretary of state otherwise directs, include only the processes so specified.

Order of the Secretary of State for the Home Department, dated May 22, 1907, extending the provisions of the Workmen's Compensation Act, 1906, to certain industrial diseases.

SCHEDULE.

Description of disease or injury.	Description of process.
1. Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelae.	Any process involving the use of a nitro- or amido-derivative of benzene or its preparations or compounds.
2. Poisoning by carbon bisulphide or its sequelae-----	Any process involving the use of carbon bisulphide or its preparations or compounds.
3. Poisoning by nitrous fumes or its sequelae-----	Any process in which nitrous fumes are evolved.
4. Poisoning by nickel carbonyl or its sequelae-----	Any process in which nickel carbonyl gas is evolved.
5. Arsenic poisoning or its sequelae -----	Handling of arsenic or its preparations or compounds.
6. Lead poisoning or its sequelae	Handling of lead or its preparations or compounds.
7. Poisoning by Gonioma Kamas-si (African boxwood) or its sequelae -----	Any process in the manufacture of articles from Gonioma Kamas-si (African boxwood).
8. Chrome ulceration or its sequelae -----	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
9. Eczemalous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	
10. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds.	Handling or use of pitch, tar, or tarry compounds.
11. Scrotal epithelioma (chimney-sweeps' cancer).	Chimney-sweeping.
12. Nystagmus -----	Mining.

- |  |   |
|--|---|
| 13. Glanders -----   | Care of any equine animal suffering from glanders, handling the carcass of such animal. |
| 14. Compressed air illness or its sequelae -----                               | Any process carried on in compressed air.   |
| 15. Subcutaneous cellulitis of the hand (beat hand)-----                       | Mining.   |
| 16. Subcutaneous cellulitis over the patella (miners' beat knee).              | Mining.   |
| 17. Acute bursitis over the elbow (miners' beat elbow).                        | Mining.   |
| 18. Inflammation of the synovial lining of the wrist joint and tendon sheaths. | Mining.   |

Order of the Secretary of State for the Home Department, dated December 2, 1908, extending the provisions of the Workmen's Compensation Act, 1906, to certain industrial diseases, and amending the previous order of May 22, 1907.

\*       \*       \*       \*       \*       \*       \*

(2) A glass worker suffering from cataract shall be entitled to compensation under the provisions of the said section, as applied by this order, for a period not longer than six months in all, nor for more than four months unless he has undergone an operation for cataract.

(3) In the application of the provisions of section 8 to telegraphists' cramp, so far as regards a workman employed by the postmaster-general, the post office medical officer under whose charge the workman is placed shall, if authorized to act for the purposes of the said section by the postmaster-general, be substituted for the certifying surgeon.

(4) The order of the 22nd May, 1907, so far as it applies to eczematous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust, is revoked, except as regards cases arising before the date of this order.

SCHEDULE.

Description of disease or injury.	Description of process.
Cataract in glass workers-----	Processes in the manufacture of glass involving exposure to the glare of molten glass.
Telegraphists' cramp -----	Use of telegraphic instruments.
Eczematous ulceration of the skin produced by dust or liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	

§ 578. National insurance act 1911—David Lloyd George Insurance Act.<sup>3</sup>—This act is divided into three parts: Part I contains the provisions for National Health Insurance; Part II contains the provisions for Unemployed Insurance, and Part III contains General provisions for outdoor relief and important features of administration.

The bill was championed by the great English Chancellor of the Exchequer, David Lloyd George. Space forbids the giving of anything more than a very brief description of the nature and scope of this comprehensive act, which contains 122 pages.

The law becomes operative July 15, 1912. The benefits of the act extend to all persons between sixteen and sixty-five years of age whose income does not exceed a fixed amount. Provision is made for the voluntary insurance of persons having an income not exceeding \$776. The act exempts from compulsory contribution all persons having an annual pension or income of \$125 or more and not dependent on their own exertions or dependent upon some other person. The act covers employment in the United Kingdom under contracts of service express or implied, whether the employé is paid by his immediate employer or another; employments on vessels registered in the United Kingdom; employments as "outworkers"; and employments in plying for hire with any vehicle or vessel under any contract of bailment.

<sup>3</sup> 1 and 2 Geo. 5. ch. 55.



The cost of insurance is divided between the employer, the worker, and the State, but the employer is in every case responsible in the first instance for the payment of his own and the employé's share. This means a payment by the employer of 7d. a week for each man, and 6d. a week for each woman in his employment. He may recover from wages 4d. from each man and 3d. from each woman, if the rate of remuneration exceeds 2s. 6d. a working day in the case of a man or 2s. in the case of a woman. Lower wages, except for employés under 21, mean an increase in the employer's share of payment. In the case of the domestic servant, the shop assistant living in, or any other case where board and lodging are provided, the ordinary rate is paid both by employer and employed. The State contributes 2d. towards every 9d. expended on benefits, or on the administration of benefits.

## WEEKLY RATES OF CONTRIBUTION.

## —Men—

Remuneration.	Worker.	Employer.	State.	Total.
More than 2s. 6d. a working day	4d.	3d.	2d.	9d.
Not exceeding 2s. 6d. a day-----	3d.	4d.	2d.	9d.
Not exceeding 2s. a day -----	1d.	5d.	3d.	9d.
Not exceeding 1s. 6d. a day-----	—	6d.	3d.	9d.

## —Women—

More than 2s. 6d. a working day	3d.	3d.	2d.	8d.
Not exceeding 2s. 6d. a day-----	3d.	3d.	2d.	8d.
Not exceeding 2s. a day -----	1d.	4d.	3d.	8d.
Not exceeding 1s. 6d. a day-----	—	5d.	3d.	8d.

Where no money wages are given, but the worker is insured, the employer pays the whole 7d. or 6d. for the worker, and can recover nothing.

Where the employer undertakes to pay wages for six weeks during the year, or engages the servant for six months or a year certain with a similar condition, reduced rates are payable. For these see points dealing with the case of the clerk and the domestic servant.

The benefits include medical benefits; sanatorium benefits; sickness benefits for a period not exceeding twenty-six weeks, disablement benefits where disablement continues after sickness benefit has ceased; and maternity benefits. The insurance relating to unemployment, covers workmen employed in building, construction work, shipbuilding, mechanical engineering, iron-founding, construction of vehicles and sawmilling. For each week after the first week of unemployment, the workman receives seven shillings or such other amount as the insurance commission shall prescribe and the payment may continue during unemployment for a period not to exceed twelve months.

## CHAPTER XXXIV.

### THE IMPERIAL INDUSTRIAL INSURANCE LAWS AGAINST SICKNESS, ACCIDENTS, INVALIDITY AND OLD AGE PRIOR TO LAW OF 1911.

Sec.	Sec.
579. Dr. Zacher's guide to the German law.	589. Agricultural accident insurance law.
580. Sick insurance.	590. The building trades accident insurance law.
581. Extent of the insurance.	591. The marine accident insurance law.
582. Accident insurance.	592. Principles affecting new insurance of small enterprises.
583. The object of the insurance.	593. Invalidity and old-age insurance.
584. The waiting period.	594. Conclusion.
585. Awarding of the compensations.	
586. Payments.	
587. Prevention of accidents.	
588. Personal liability of the employer in relation to the obligatory Industrial Insurance Law.	

§ 579. Dr. Zacher's guide to the German law.—The most accurate and concise presentation of the purpose and nature of the German law as it existed prior to the law of 1911, is that of Dr. George Zacher, which appeared in 1904. No material changes were made in the law from that date to the time of the present code. A translation of this work is set forth in the succeeding sections.

§ 580. Sick insurance.—The first of the social political enactments was the Sick Insurance Law of June 15, 1883, which regulated the reform of sick relief in its relation to the insurance against accidents. These two branches of insurance supplement each other, and—quite unlike mere poor-law relief, which aims only at upholding the existence of the individual—are designed to

provide relief in case of sickness or accident, and to compensate for lost wages during the time of disability to work. On the principles of previous legislation, which trusted chiefly to the good will of interested parties, barely one-half of those who needed it, were in a position to profit by this aid and relief.

**§ 581. Extent of the insurance.**—This state of things necessarily led to the introduction of compulsory insurance, which in the first place was by law made obligatory to all workmen employed in mines, quarries, factories or other industrial concerns and to managing officials (with yearly salaries up to 2,000 marks, whose circumstances therefore are nearly alike) in so far as such obligation might be found generally necessary and practicable. In the second place it was permitted to establish a statutory obligation of insurance on the part of the parish (township) for those groups of trades and callings—such as so-called home industries (small masters and mechanics working at home), and agricultural laborers—where the above-mentioned necessity is entirely dependent on local circumstances.

The foundation and first condition of compulsory insurance is dependency on an employer, so that persons carrying on a business of their own are generally exempted. But the law concedes to all exempted workmen and officials, as well as to servants, the right to participate voluntarily in the benefits of the insurance.

The supplemental measure of April 10, 1892 (taking effect on January 1, 1903), designed to bring the sick insurance law into harmony with the other insurance laws (against accident, invalidity and old age), which in the meantime had received the sanction of the government, has widened still farther the range of insured persons. Thus, persons engaged in commercial firms, in the offices of attorneys, notaries, bailiff, sick-clubs, trade associations and insurance institutions are made liable

to the legal, and agricultural officials to the statutory obligation of insurance. All those exempted, however, whose yearly earnings do not exceed 2,000 marks, may obtain the statutory privilege of insurance.

As regards the mode of carrying out the insurance, the fundamental aim and object of the law is mutual insurance based on self-administration. The insured are grouped in corporate associations whose members belong to the same trade or calling, where the risk of sickness is about alike. Such organization greatly facilitates self-administration, and while it exercises a healthy and moral influence on the members in their intercourse with one another, it makes "simulation" (malingering) more difficult and the indispensable control easier and more effectual.

Quite contrary to the insurance against accidents, the sick insurance is restricted to local organization, since here cases of less importance are continually occurring, in which relief, to be efficacious, must be prompt.

In consequence of this, the law, without interfering with existing institutions, has authorized beside the voluntary sick clubs, which every one is at liberty to join, the formation of the following obligatory sick associations:

1. The local sick clubs, established by parishes (townships) for branches of trade within their limits;
2. The industrial (factory) sick clubs erected by proprietors of large factories.
3. The builders' sick clubs, which contractors of building are bound to establish;
4. The Guilds' sick clubs, founded according to the National German Trades Regulation law;
5. The miners' sick clubs formed in accordance with the mining laws of the several states of Germany; at last,

The subsidiary (township) sick insurance, which

strictly speaking is not a sick association, but a local institution comprehending all those who are liable to insurance, but who belong neither to a voluntary nor to an obligatory sick association.

Between these organized associations, the right of changing one's membership in case of removal is recognized, i. e., persons newly admitted have neither to wait a certain time until they can obtain the benefits warranted by the law, nor to pay an entrance fee. As the Guilds and the miners' sick clubs are accessible only to certain callings; as the builders' sick clubs are available only for workmen in temporary employment, and as the independent sick relief clubs rest on the voluntary principle, it follows that the law has its main bearing upon the local and the industrial (factory) sick clubs, which embrace the majority of all the associations, and persons insured.

The great purpose of the insurance is to secure to the insured an ever certain and sufficient relief, in case of sickness, during at least 26 weeks, (since January 1, 1904, formerly 13 weeks, novel of May 25, 1903).

The minimum relief to which all the insured have a legal claim, includes:

1. Free medical attendance and medicines from the beginning of the illness, likewise spectacles, trusses, bandages, etc.

2. In case of incapacity for work, from the third day of the illness, for every working day a sick pay, amounting to one-half the daily wages on which the contributions have been based.

Or, in special cases: Free admittance to a hospital, together with half the sick pay for the families.

Besides this assistance the obligatory insurance grants:

3. Burial money amounting to twenty times the average daily wages, and

4. Sick relief to women during six weeks after confinement.

The money value of this assistance is considered equal to the average daily wages upon which the calculation is based. The law, however, allows the double insurance of sick pay up to the full amount of the average daily earnings of the insured. It also authorized the sick clubs to extend the assistance given even to relief for an entire year (instead of 26 weeks), and for women to 12 (instead of 6) weeks after confinement. The daily sick pay may be raised from 50 to 75 per cent, and the burial money from 20 to 40 times the average daily wage. Sick allowances may also be paid for the first three days of the illness, as well as for Sundays and holidays; and finally the relief may be extended even to the other members of the family and to convalescents.

The contributions of the insured are limited by the law (independent clubs not included) in the Parish Sick Insurance to  $\frac{1}{2}$  per cent of the usual local daily wages of common laborers, and for the rest they must not exceed  $\frac{3}{4}$  per cent of the average daily wages of that class of workmen for whom the club has been formed.

The law binds the employers, when depositing the contributions of their workmen, to pay themselves a sum equal to one-half the contributions of the employés, so that two-thirds of the whole are furnished by the workmen, so that one-third of the whole are furnished by the employers.

The costs of management, which latter, conformably to the principles of self-administration, is mainly placed in the hands of the workmen, aided by the co-operation of the contributing employers, under the supervision of the authorities, are paid by each club for itself. In the parish insurance they fall on the parish (township), and in the industrial and building sick clubs they are borne by the employers.

The further extensions of the German National Sick

Insurance to agricultural laborers and to servants is not yet realized, but even now there are insured over 10 millions of persons and about 200 millions of marks annually are expended in Germany for sick relief alone.

§ 582. **Accident insurance.**—As with sickness, so in the case of industrial accidents the previous legislation proved inadequate to secure an indemnity to the workmen. The common law granted no compensation in the frequent cases where persons were killed or wounded either by chance or through their own imprudence. If a man suffered by the malice or carelessness of another person, only the immediate author of the disaster—usually a fellow workman or an overseer—could be called to account, but not the employer. Thus the sufferer or his survivors could rarely obtain a fair compensation, for even when a law-court decided in their favor, they generally had to go away with empty hands, in consequence of the poverty of the responsible party. Scarcely one-tenth of all accidents were properly compensated.

These evils led to the Liability Law of June 7, 1871, which imposed on the employer a personal responsibility for accidents occurring in his business, and particularly for the negligence of his managers.

Under this law the employer is bound to compensate fully the loss arising from the death or bodily injury of a person in the following cases:

1. In railway accident, when he (the employer) cannot show that the injured suffered by his own fault, or by circumstances beyond the employer's control.
2. In other cases (such as may happen in mines, quarries, excavations, or in factories) when the injured, or his part, can show that either the employer or his officials were in fault.

Although this law was a step in the right direction, it had not the desired effect. The heavy burden of proof



laid on the party seeking redress almost frustrated the beneficent intentions of the measure. The inability of the responsible parties to pay an indemnity often compelled the applicant to fall back upon public charity, and the increasing number of lawsuits seriously embittered the relations between employers and employés. Finally, the limitation of responsibility to cases, in which the blame rested with employers or managers, left uncovered not only cases originating from personal fault or neglect, but likewise that large class of injuries caused by inevitable risks or similar cases.

This experience corroborated the conviction expressed in the Emperor's Message of the 17th of November, 1881, that it is the imperative duty of the Christian State, by means of positive enactment to care for the helpless element of the population and to secure to them, when partially or totally disabled in the pursuit of their calling, such a provision as will protect them from being thrown upon public charity. For this reason the principle of redress by private litigation must be abandoned in favor of an insurance based, like the sick relief insurance, on public law, binding employers to care for the employés or their families in case of accident; for, as such casualties are necessarily incident to the undertaking, the compensation for injuries must be regarded as a part of the cost of production. Considering the serious difficulties to be surmounted, with no precedents to be guided by, legislation could advance only step by step.

Accordingly the following accident insurance laws were passed:

1. The so-called "fundamental law" of July 6, 1884, for the Industry (the trades formerly subject to the Liability Law, the handicrafts using machines and some under-ground building).

2. The "extension law" for the great Transport Trades (on land and water), within the country, includ-

ing the administration of the post, the telegraph, the railway, the army and the navy.

3. The "agricultural law" of May 5, 1886, for Agriculture and Forestry.

4. The "building law" of July 11, 1887, for Navigation.

These laws—except the "extension law"—represented each for itself a special legislation adapted to its peculiar province of insurance (industry, agriculture, building, navigation).

For the same reasons as formerly in the sickness and invalidity insurance a revision of the accident insurance followed in 1900. Thus, certain rules for organization (partly common to both the accident and the invalidity insurance) were combined on a special (principal) law and the extension law was merged into the fundamental law, but the fusion of all the single laws into one General Act was abandoned as impractical. Accident insurance as revised (since October 1, 1900) therefore comprises, besides the above mentioned principal law of June 30, 1900, the following separate laws for: 1, Industry; 2, Agriculture and Forestry; 3, Building; 4, Navigation. Special laws have been issued for the accident insurance of prisoners (law of June 31, 1900) as well as officials and soldiers (law of June 18, 1901).

The accident insurance law for industry concerned especially the great industries, including the administration of the post, the telegraph, the railway, the army and the navy. The compulsory insurance comprises principally all workmen (irrespective of wages) and inferior managing officials (with yearly salaries up to 3,000 formerly 2,000 marks, under the new law) in domestic and other services ordered by their masters or managers apart from their regular work.

The insurance is carried out under the guarantee of the Empire, on the mutual system, by the employers

united in trade associations, which may embrace all the several branches of industry in certain districts or in the whole Empire. The trade associations enjoy the privilege of legal persons and have perfect self-administration, which they may decentralize by forming "Sections" and by appointing a "confidential agent." Each trade association comprises by law all establishments of the respective branches of trade within its district, accessory works following regularly the principal enterprise; by statute, however, industrial accident insurance may now be extended to accessory agricultural workers, if the industrial workmen of the principal enterprise are mainly employed in them. The "employer" is held to be the person on whose account the enterprise is carried on. In the case of state undertakings special "Executive Boards" replace the trade associations.

**§ 583. The object of the insurance.**—The object of the insurance is to secure compensation for bodily injury or for death arising from an accident to the insured person whilst working for his employer, unless the victim himself has caused the accident intentionally. The compensation (now considerably increased) includes the following normal payments: 1. In case of bodily injuries, from the beginning of the fourteenth week after the occurrence of the accident, i. e., continuation of the sickness insurance; free medical attendance, including the necessary medicines and remedies and a pension during the period of disablement (full pension, two-thirds of the yearly earnings for complete disablement, partial pension for partial disablement) or else free hospital treatment until the cure is finished and a pension for the family as in the case of death. 2. In case of fatal injuries, a burial money equal to the fifteenth part of the yearly earnings, but not less than fifty marks, and a pension to the survivor (widows or disabled widowers and children under fifteen years, also needy parents and

grandparents or orphan grandchildren)—from 20 up to 60 per cent of the yearly earnings.

Beyond these normal payments, however, the accident pensions, in case of absolute helplessness, must be raised up to the full yearly earnings, and in case of undeserved non-employment, the partial pension may be raised (by the directing board) up to the full pension; the trade associations are also authorized to grant still further voluntary allowances in favor of the insured. The yearly earnings are reckoned generally at 300 times the amount of the individual average daily wages (any amount exceeding 1,500—formerly 1,200—marks being calculated only at one-half), but at least 300 times the usual daily wages of common laborers. The full pension is limited two-thirds of the yearly earnings in analogy to the pensions of most officials, because the time of non-employment inevitable for every workman and the relief of the disabled workmen from providing for his working outfit must be taken into account, and also because all accidents are compensated, even those due to personal negligence.

**§ 584. The waiting period.**—During the so-called waiting time, i. e., the first thirteen weeks after the accident, the sick clubs, and failing them, the employers have to provide for the victim, in which case the sick pay must be raised, at the employer's expense, from the beginning of the fifth week, to at least two-thirds of the wages corresponding to the sick pay (not to the real earnings) of the insured. In the interest of an equal and suitable treatment of sufferers, from accident, the trade associations are, however, legally authorized either to submit at their own cost the care of the injured to the sick club beyond the thirteenth week, until a complete cure is effected, or they may themselves undertake the charge of the patient at any time during the first thirteen weeks, on the understanding that their

due or outlay of sick-pay shall be refunded by the sick-club. The gap formerly occurring between sick benefits and accident benefits has also been filled up, i. e., the trade associations now has to pay the accident pension, so during the (formerly now insured) interval in all cases, when the sick-pay has ceased during the waiting time (the injured having recovered), but the accident pension (for still partial disablement) has not yet become payable.

**§ 585. Awarding of the compensations.**—The compensation is to be fixed officially, after investigation by the police, by the organs of the trade association without delay; if the compensation can not be fixed at once, preliminary provision must be made for the entitled person. The procedure has been still further improved, especially the co-operation of the entitled person and of the physicians has been extended and the alteration of current pensions on account of “change of circumstance” falls under prescription in two years.

Against the “decision” of the trade association the entitled person may appeal within a month to an arbitration court composed of two representatives chosen by either party, employers and insured, with a state official as chairman. The arbitration courts are established according to the districts of the invalidity insurance institutions and have been working since January 1, 1901, for both the accident and the invalidity insurance. In the more important cases both parties are still allowed to appeal against the judgment of the Arbitration Court to the “Reich-Versicherungsamt” (Imperial Insurance Office), which is the supreme authority for the whole organization with regard to administration as well as jurisdiction. It is composed of “permanent” members—a president appointed for life by the Emperor on the proposal of the Bundesrat, and several superior state officials similarly appointed—and of “tem-

porary" members, namely: Six delegates of the Bundesrat and six representatives of the employers and the employed in equal numbers (two for each group: Industry, Agriculture, Navigation). The directors (at present one for each "Section of administration;" I. Accident Insurance, II. Invalidity Insurance), and the presidents of the "Senates of Appeal" (at present twenty for one, five for eleven) are appointed by the Emperor among the permanent members. The awarding Senates are composed as follows: In cases of appeal in accident matters there are seven; in cases of revision in invalidity suits, five members (among whom representatives for both the employers and the employed, and judiciary assistants); but one more permanent and one more temporary member (delegate of the Bundesrat) are required to assist in invalidity suits, if any point of principle is to be decided ("increased" Senate, or together seven members). Whenever, in any fundamental question of law, any Senate intends to deviate from a former award, the case must be referred to the "enlarged" Senate, in which each group (Insurance Office, Bundesrat, judges, employers, employed) is represented by two members, besides the president sitting as chairman. The privilege of the federal states to establish state insurance offices for their districts and at their own expense has been left untouched.

**§ 586. Payments.**—Cost of treatment and burial money must be paid within a week after having been fixed and pensions must be paid monthly in advance, or quarterly, if under sixty marks yearly; the law, however, permits longer terms by agreement and also the payment of lump sums in lieu of small partial pensions (under 15 per cent of the full pension).

The payments of compensation are advanced upon orders of the Directing Board of the Association through the post-offices, which advances, at the close of

the financial year, have to be refunded by the board. To cover the advances named, the management expenses and the additions to the reserve fund, the members of the Trade Association are assessed in such a way that only the actual expenditure of the past year, and not the capitalized value of the annuities, will be raised. In order to facilitate the gradual conversion of this assessment system with increasing contributions into a system of capitalization of the annuities by means of fixed contributions, a further increase of the reserve funds already accumulated with a corresponding employment of the interest accruing (from the year 1922 forward) has been provided for. Every employer contributes to the burdens of the year in proportion to the risks to which he exposes his Trade Association. These risks are determined for each separate establishment under a classified danger tariff drawn up by the Trade Association and in proportion to the amount of wages and salaries paid.

**§ 587. Prevention of accidents.**—As it is evident that both the trade associations and their individual members have a strong interest in diminishing the chances of accidents, the law confers on the Trade Associations the important privilege of prescribing regulation for the prevention of accidents; by such regulations not only the employers can be compelled, under penalty of higher assessment, to adopt the necessary measures for safety, but also the workmen may be forced by fines to follow these rules. The new law has considerably enlarged those provisions, especially it has rendered more effective the co-operation of the workmen's representatives, of the Association Sections and of the Reichs-Versicherungsamt for the adoption of precautionary regulations and for their observance (under the control of technical inspectors).

Such accident preventive regulations have already

been adopted by sixty-five out of sixty-six Industrial Trade Associations, but only by eighteen out of forty-eight Agricultural Trade Associations. The accident statistics supply a valuable basis for further improvement of preventive measures. According to the Accident Statistics of Industry for the two years 1887-1897 and of Agriculture for the two years 1891-1901 the compensated accidents (the cases not cleared up excluded) were caused:

By Fault.	Industry.		Agriculture.	
	1887.	1897.	1891.	1901.
Of the employers-----	20.47	17.30	18.61	—%
Of the employés-----	26.56	29.74	24.99	—%
Of both parties-----	8.01	10.14	23.39	—%
So that the greater part-----	55.04	57.18	66.99	—%
is due to negligence of the parties, and only the smaller part-----	44.96	42.82	33.01	—%

to inevitable risks of employment and other cause (compare "Amtliche Nachrichten des Reichs-Versicherungsamts" years 1890, p. 199, and supplements for 1899-1900, 1893, p. 231, and supplement for 1904).

As regards the participation of the insured workmen in the organization of the Trade Association, they are neither members of the associations nor have they to bear any of the corporate burdens. They have, however, to take on themselves a portion of the aggregate liabilities caused by accidents, in so far as, together with the employers they contribute to the sick relief club, to which, for practical reasons, the care of patients is left during the first thirteen weeks of illness ("waiting time"; about six and two-thirds per cent of the whole burdens of sick insurance, i. e., four and one-half per cent to the charge of the workmen). But the statistical calculations made show that the contributions of the workmen to the accident insurance stay in an inverse ratio to the contributions of the employers to the sickness insurance, for while the workmen, on their part, bear only eight per cent of the entire burden for the acci-



dents, the employers have to contribute four times as much (thirty-three and one-third per cent) to the sickness insurance. From these reciprocal relations it follows as a necessity, that the employers should participate in the management of the Sick Associations, and that to the employes in their turn, must be conceded a share in the administration of the accident insurance. Accordingly the law permits representatives of the workmen, elected by them, to take part in the discussion of preventive regulations, and in the police investigations of accident cases, as well as in the proceedings of the Arbitration Courts and of the Imperial Insurance Office; on all these occasions the workmen enjoy the same rights as the representatives of the employers, and the law guarantees them the free exercise of this honorary co-operation.

**§ 588. Personal liability of the employer in relation to the obligatory industrial insurance law.**—With reference to the relation in which the obligatory insurance law stands to the personal liability, from which the employers of industrial labor and their officials are now in general relieved, it should be stated, that those employers or officials remain liable who are convicted under the penal law of having caused the accident either intentionally or by negligence, i. e. they are obliged to make up to the person intentionally injured (or to the survivors) the excess amount between the indemnity awarded (if any) and the compensation payable under the Accident Insurance Law; but to their sick-clubs and Trade Associations which are in the first place bound to make the payment, they will be held responsible for the full amount (to the latter, now, even without conviction). Third parties, however, remain as heretofore liable for the whole extent of the damage caused, and have to refund the compensation, already paid, to the Trade Association, and not to the injured (or sur-

vivors) already indemnified. All other relief bodies, apart from the Trade Associations remain bound to furnish the same aid and relief as heretofore, but the Trade Associations will refund to them such portion of the assistance as they are bound to afford under the accident insurance law.

**§ 589. Agricultural accident insurance law.**—The Agricultural Accident Insurance Law embraces the whole Agriculture and Forestry. Unlike the Industrial Accident Insurance Law, it allowed the extension of compulsory insurance (by State Law) to all employers and (by statute) to domestic service connected with agriculture or forestry, since the number of small agriculture holdings is immense (according to the statistics of June 14, 1895: about 3.2 million lots under two hectares and 2.0 million small properties of 2-20 hectares area), the owners of which are hardly of any better economic and social standing than laborers and are mostly compelled to seek accessory occupation (wage labor), so that a distinction between insured (wage) labor and not insured (private) labor would scarcely be possible; moreover the agricultural accident insurance now embraces (to a greater extent than hitherto) in industrial work accessory to agriculture and forestry, according to practical needs.

Other difficulties from the industrial accident insurance are accounted for by the less complicated nature of agriculture and forestry and are intended to simplify both the organization and the administration. Thus, in consequence of the prevalent uniformity in agricultural pursuits, the Trade Associations are organized by territorial district, which must coincide with those of the communal or state administration (provinces, federal states). The current administration, so far as it belongs to the Directing Board, may be entrusted, by agreement or legal provisions, to political administration au-

thorities (such as country or provincial committees) or to magistrates. Not the actual earnings of the injured are taken as a basis for determining the annuities due, but the average rate of wage for agricultural laborers, as fixed by the higher administrative authorities after consulting the local authorities and experts among employers and employés (distinct rates being fixed for male and female, for young and adult laborers); only managing officials and skilled workmen are indemnified according to their actual wages, as in the industrial accident insurance. The contributions may be levied, not according to the classification of a danger-tariff and the number of hands employed, but on the basis of taxes (by additions to the direct state or local taxes, especially the land tax), if so resolved or confirmed by the association assembly with two-thirds majority (before October 1, 1901); in that case the higher risks of industrial accessory work are to be balanced by corresponding addition to the contributions.

During the waiting time the parish is required as hitherto, to make preliminary provision for the injured (free medical attendance and remedies), in all cases where a provision equal to that insured by the Imperial sickness insurance has not been introduced either by state law or by statutory enactments; the claims, however, which the common law gives the injured against their employers, remain in force.

**§ 590. The building trades accident insurance law.**—The Building Trades Accident Insurance Law embraces all the branches of employment in building not yet covered by the above mentioned laws, in particular underground building (in the soil and in water) and in the “Regie-” or private building (without intervention of contractors). For the underground building a single Trade Association (“Tiefbau-Berufsgenossenschaft”) embracing the whole Empire has been formed, and its

insurance has been regulated under provisions embodied in the original law; but as these enterprises are generally of limited duration, it has been found expedient to adopt the capitalizing system in place of that of assessment. The insurance for the Regie-Building, however, it is effected by special "insurance institutions" established as appendages to the several Building Trades Associations, and goes to the account of the parish unions, if the employment does not exceed six working days (the parish being liable), otherwise, to the account of the employer (by premium). For the waiting time the workmen in this branch of building have the same rights as the agricultural laborers (see above).

**§ 591. The marine accident insurance law.**—The Marine Accident Insurance Law embraces the navigation as well as the sea and coast fishery. While the insurance for the large enterprises is effected, as previously, by the Marine Trade Association ("See Berufsgenossenschaft"), a special "Insurance Institution" has been provided for the recently established insurance of small enterprises (with small sea-going and fishing craft). Unlike the industrial accident insurance law, this insurance is not tied to the amount of income, but always restricted up to 3,000 marks yearly earnings or more, (if so prescribed by the statute), and the yearly earnings of seamen are ascertained not on the basis of the individual wages, but of average rates of wages, which are fixed by the reichstag uniformly for the whole coast in several classes (at 11, formerly 9—times the monthly account including regular accessory earnings.) For the waiting time, in the first place, the provisions of the commercial code (for skippers, § 553) and of the seamen's code (for sailors, § 59), remain in force, these rules imposing the care for the sick and injured men upon the ship-owner; in all other respects the same rules obtain as in the industrial accident insurance.

**§ 592. Principles affecting new insurance of small enterprises.**—For the new insurance of small enterprises as a departure from general rules, the following principles have been laid down: 1. the employers are subject, by law, to compulsory insurance, if they form part of the crew and do not employ as a rule more than two wage-workers; 2. yearly earnings are calculated at 300 times the usual local daily wages of common laborers; 3. relief during the waiting time is regulated as in the agricultural accident insurance; 4. the funds required to defray the compensations are raised on the system of capitalization (by premiums) and are contributed by the larger parish unions of the coast districts in proportion to the number of persons employed in the insured enterprises (one-half being unrecoverable, the other half recoverable from the employers of parishes concerned).

The 66 industrial trade associations are distributed over the several branches of industry as follows: Building trades, 14; textile and iron (steel) industry, 8 each; food and beverages, 7; wood industry, land and water transportation, 4 each; earthen ware (such as potteries, brick work, glass works), 3; paper, metal (fine and ordinary), and mining, 3 each; finally, fine mechanics (such as opticians, etc.), chemical, gas and waterworks, printing, leather, clothing industry, manufacture of musical instruments and smithcraft, 1 each.

The accident insurance will still be completed by its extension to handicrafts and small trades, to home industry and commerce, and about one million of concerns and two millions of the employed; so that all the workmen on wages, and the other classes of similar standing, (with not more than 3,000 marks a year), such as industrial and agricultural managers, commercial clerks and small employers, will reap the benefits of the accident insurance laws, in virtue of these laws, the employers have already paid over 900 millions of

marks for compensations alone and 200 millions of marks to the funds.

**§ 593. Invalidity and old-age insurance.**—The invalidity and old-age insurance is intended to secure to person working for wage or salary a legal provision in cases not covered by the sick and accident insurance laws. The Invalidity and Old Age Insurance law of June 22, 1889, which first dealt with this branch of insurance coming in force on January 1, 1891, has been replaced since January 1, 1900, by the invalidity insurance law of July 13, 1899. This new law, like the revised sick insurance law has introduced several improvements based on the experiences made in the meantime.

It subjects to compulsory insurance (for the completed 16th year of age): 1. all persons working for wages in any branch of trade, apprentices and servants, included; 2. managing officials (foremen, engineers), commercial assistants (clerks and apprentices) and other employés (such as ship-captains), as well as teachers and tutors—all these, provided that their regular year's earnings do not exceed 2,000 marks. The obligation to insure may also be extended (by order of the Bundesrat): 3. to small masters (with only one assistant workman), and to so-called home industrials irrespective of the number of hands employed). Hitherto the obligation to insure has been extended by order of the Bundesrat to the home industrials of the manufacture and of some branches of the textile industry (weaving, knitting).

The following are allowed (up to their fortieth year) to join voluntarily the insurance: 1. to all employés with yearly earnings of 2,000 to 3,000 marks; 2. small masters (with only two regular workmen), and home industrials (persons working in their own homes), so far as they are not liable to compulsory insurance; 3. persons who are exempt from compulsory insurance because

they work only occasionally or for maintenance (board and clothing).

The right to continue or renew the insurance voluntarily is given when the grounds for the former insurance no longer exists or the insurance itself lapses; the latter case happens, when during two years (for the despatch of the receipt than 20 (formerly during four years 47) weeks and for persons allowed to insure, contributions for less than 40 weeks have been paid.

Exempt from compulsory insurance are: 1. the officials of the Empire, the federal states and the provincial administrations as well as teachers and tutors at public schools for institutions (whilst training for their future calling or if expecting a pension equal to the lowest invalid pension); 2. soldiers, who in service are employed as workmen; 3. officials of the insurance institutions and the special insurance organs when entitled to a pension; 4. persons giving instructions for remuneration during their term of study; 5. infirm persons who are already entitled to an invalid pension, or whose capacity for work is permanently reduced to less than one-third by old age, sickness or other infirmities, and 6. persons who receive only free maintenance (board and clothing), in lieu of wages or are exempt (by order of the Bundesrat) from compulsory insurance as only occasional workers.

The object of the insurance is, to give the insured a legal claim to a pension for invalidity or old age. Besides this, it confers a right to the recovery of contribution (in so far as paid by the insured, during at least a space of 200, formerly 235 weeks), 1. in favor of women who marry before obtaining an annuity; 2. in favor of the survivors of such insured person as die before the annuity becomes attainable (widows, widowers unfit for work, orphans under 15 years of age and children of deserted wives); 3. in favor of such persons as are invalidated by accident, but do not get the invalid pension,

their accident pension being higher. Finally, sick relief (with relief also to the family), may be granted to insured persons, in so far as, in consequence of the illness, a claim for an invalid pension, in, by reason of incapacity for employment, is to be apprehended.

The pension for invalidity will be granted, irrespective of age, to every insured person who is permanently disabled, i. e., no longer able to earn at least one-third of his average wages, calculated on certain fixed principles; and also to persons not permanently disabled, but who for half a year have been unfit for work, during the remaining period of their disability. Thus, the invalid pension offers a compensation for the loss of capacity to work. Besides the proof of disability (not purposely caused) a waiting time of regularly 200 (formerly 235), contributory weeks is requisite, to obtain the pension.

The pension for old age will be granted, without proof of disability, to all who have completed their seventieth year. It forms an addition to the earnings of old, but not incapacitated working people, and makes some amend for the diminished vigor or age. The waiting time here extends to 1,200 (formerly 1,410) contributory weeks.

Attested period of illness, and military service, as well as the term of a former invalid pension will be reckoned (full weeks only), in the waiting time for both annuities. The periods of illness are to be certified by the sick club to which the insured belongs, or ascertained through the local authorities.

The law lays down, however, in favor of those insured among others the following transitory provisions regarding the waiting time. As to the waiting time for the invalids pension—in case of those insured who become invalids within five years after the compulsory insurance for their particular calling came into force, a former employment will be allowed to count so far as it falls within last five years before the invalidity occurred



and has lasted at least 40 (formerly 47) weeks after the insurance obligation came into force. As to the waiting time for the old age pension for those insured, who had already completed the 49th year of age when the compulsory insurance for their particular calling came into force, 40 weeks, for each succeeding year will be reckoned, if a professional employment during the last three years before the insurance obligation came into force has been pursued or has lasted at least 200 weeks within the first five years after the insurance obligation came into force. As regards the waiting time for both pensions, besides attested periods of illness, military service and the time of previous drawing of an invalid pension, also temporary interruptions in regular employments or season-trades and paid work done at home by infirm people will be counted in the time before the insurance obligation came into force up to four months during a calendar year.

The money to pay the invalidity and old age pensions is furnished jointly by the Empire, the employers and the employed. The Empire contributes to each annuity the fixed amount of 50 marks per annum, and pays the contributions of the workmen, while serving in the army or navy. It defrays the expenses also of the Imperial Insurance Office, and effects gratuitously, as in the case of the accident insurance, and the payment of pensions through the post-offices. All other expenses are borne in equal shares by the insured and their employers, and are raised by current contributions. With a view to fixing the contributions for each contributory period, the insured have been divided into the following five wage classes, according to the amount of their yearly earning: Class I up to 350; II, up to 550; III, up to 859; IV, up to 1,150; V, above 1,150 marks. As the yearly income, not the actual earnings of the insured are taken (except fixed cash payments for weeks, months, quarters or years), but the average wages

earned in his calling or trade, as fixed by the sickness and accident insurance, or else three hundred times the usual local daily wages of common laborers in the locality. However if employer and employed agree on procuring a more ample provision, the contributions for a higher class may be paid in; otherwise, the insured person is entitled to insure himself in the higher class.

The payment of the contributions, as a rule, is to be made by the employer, who, after purchasing stamps (resembling postage-stamps) from the respective local insurance office, affixes them (to the amount of the contribution due) to the receipt-card of the insured. These stamps may be had at all post-offices, and at numerous private shops; the Imperial Insurance Office determines the distinguishing marks of the stamps, the times for which they are valid and the different periods for which they are to be issued (since January 1, 1900; for 1 week, 2 weeks and 13 weeks). The contributions are to be paid regularly for each week in which the insured finds himself in an employment or service subject to the insurance ("Contributory weeks," "weekly contributions"). The receipt-card has room for at least 52 stamps covering 52 contributory weeks. It is prohibited, under severe penalties and the immediate confiscation of the card, to mark on the same any irrelevant entry or notice regarding the workman whose name it bears. The insured is furthermore entitled, at any time to demand a new receipt-card. The contents of the receipt-cards of the same persons may be transferred by the Insurance Institution to collective cards (personal accounts).

The collection of the contributions may be committed to the sick clubs, the local authorities, or to special receiving office; the latter may also be authorized to collect the contributions of the Sickness Insurance.

In paying the wages to the employed, the employers are entitled to deduct one-half the contribution (for the two last periods of wages payments). On the other

hand, persons who voluntarily enter into, continue or renew, the insurance, will have to pay, regularly out of their own means, the full contribution.

The amount of the contribution must be fixed equally on all for all the Insurance Institutions (by the Bundesrat for 10 years each) and estimated in such a manner that they shall be sufficient to cover the capital value of the annuities chargeable to the Insurance Institutions, the reimbursements of contributions and the other expenses of the Insurance Institutions. The contributions are to be graduated for the different wage classes only according to the average amount of the pensions to be granted in the same by the Insurance Institutions; within each wage class the contribution must be equal for all those insured. The respective regulations of the Bundesrat must be approved by the Reichstag.

For the term until December 31, 1910, the following weekly contributions have been fixed by law, on the basis of insurance statistics: in Class I 14, in II 20, in III 24, in IV 30, in V 36 pfennigs. Any surplus of, or deficiency is to be balanced by the new contributions.

As to the amount of the annuities, the Old Age Pension is made up of the above-mentioned state subsidy of 50 marks and another amount to be provided by the Insurance Institutions as follows: in Class I 60, in II 90, in III 120, in IV 150, in V 180 marks. Hence the Old Age annuity amounts (rounded off): in Class I to 110.40, in II to 140.40, in III to 170.40, in IV to 200.40, in V to 230.40, marks per annum.

The invalid pension consists of the state subsidy of 50 marks, an initial (fundamental) sum (in Class I 60, in II 70, in III 80, in IV 90, in V 100 marks), and increasing sums corresponding to the number of the contributory weeks (in Class I 3, in II 6, in III 8, in IV 10, in V 12 pfennigs each). The highest of the invalid annuity therefore depends on the number of the weekly contributions paid in, and on the respective wage class-

es. Therefore it amounts, after the waiting time of 200 contributory weeks, at least: in Class I to 116.40, in II to 126.00, in III to 134.50, in IV to 142.40, in V to 150.00 marks, and after the lapse of 50 years or 2,500 contributory weeks (state of permanence, Beharrungszustand, i. e. when the increasing charges have reached the highest point and the pensions annually going off and coming on the fund will balance each other) in Class I to 185.40, in II to 270.00, in III to 330.00, in IV to 390.00, in V to 450.00 marks.

It is evident from the relative proportions of the contributions to the pensions that such favorable conditions can be offered to working people by no private insurance system, for the insured to obtain the state subsidy and the employers contributions without giving any equivalent. After the lapse of the waiting time (200 contributory weeks), for instance, the amount of the yearly invalid pension in Class II will be more than 6 times as high as the total of all contributions paid by the insured.

All the pensions are paid monthly in advance (rounded off to 5 pfennigs), and can be neither pawned nor sequestrated. Should the insuree be already in possession of an Accident Annuity or a State Pension, his claim to the Old Age or the Invalid Annuity will remain in abeyance, so long and so far as the annuity in question, when added to the other receipts, exceeds seven and a half times the fundamental sum of his Invalid Pension (formerly the sum of 415 marks). The pension will likewise remain in abeyance so long as the insured is in prison or in a foreign country.

The carrying out of the Invalidity and Old Age Insurance is intrusted, under state guarantee, to special Insurance Institutions, whose districts coincide with the province or state divisions. Every insurance institution possesses the character of a legal person, and is managed on the basis of the statute drawn up by the man-

aging "committee." This committee is composed of at least five representatives of both employers and insured. So far as certain privileges are not reserved to the committee by law or by statute, the administration is placed in the hands of the "Directing Board" which is invested with the character of a public authority; it comprises official members (local or state officials) and representatives of both the employers and insured.

Every insurance institution administers its receipts and its fund (both common and separate) independently. Out of these the common costs to be met by all the insurance institutions (common charge) and the special costs remaining to the single insurance institutions (separate charge) are to be covered alike. The common charge is made up of three-fourths of all old age pensions, of the fundamental sums of all invalid pensions, of the increase of pensions in consequence of weeks of sickness and the rounding off of the pensions. All other liabilities constitute the separate charge of the insurance institutions. Four-tenths of the contributions with interest accrued are reckoned from January 1, 1900, in each insurance institution to the common fund, but the remainder to the separate fund (any modification of this division being reserved for the Bundesrat with the consent of the Reichstag). The funds of the insurance institutions must be invested like trust funds (1807-1808 of the civil code). The insurance institutions may, however, invest their funds (with the consent of the authorities) also in other ways up to one-half of the amount in outlays serving to benefit the welfare of the insured people, especially in the construction and improvement of the workingmen's dwellings.

In addition to the receiving offices special pension offices may be established as local organs to administer the business otherwise falling to the local authorities (receiving, preparing, examining the claims to a pension); in the more important cases, however, one repre-

sentative each of both the employers and the insured must be invited to attend the proceedings, even the claimant or the recipient of the pension (at his request or on other grounds). Such representatives are to be elected, generally, by the directing boards of the local sick funds and they on their part, elect the members of the managing "committee" of the insurance institution and the latter again elect the lay members of the "Directing Board" of the insurance institution as well as the members of the "Court of Arbitration." The officers of the unsalaried members of the directing board, the committee and the Arbitration Courts, honorary, and their holders receive no other remuneration except repayment of actual expenses. The representative of the workmen, however, obtains compensation for loss of wages.

When a claim to a pension (for invalidity or old age) has been made to the local administrative authorities or pension office for the place of residence or employment of the insured, and has been transmitted by them to the competent insurance institution, it devolves on the directing board of the latter to give an (approving or rejecting) notice in writing. Against such decisions the insured may appeal within a month to the Arbitration Court (similarly composed as those for the accident insurance); and against its judgment both parties may appeal within a month to the Reichs-Versicherungsamt.

As in the case of the Accident Insurance here, too, the supervision is committed to the Reichs-Versicherungsamt (Imperial Insurance Office); some of the federal states, however, have instituted special State Insurance Offices.

As regards the results of the Invalidity and Old Age Insurance, in the first twelve years (1891-1902) besides 1,093,681 reimbursements and 156,000 cases of sick relief—no less than 1,302,900 annuities (402,856 Old Age Pensions and 900,044 Invalid Pensions) have been grant-

ed, 720 millions of marks (including 252 millions of marks state subsidies) have been paid out, and 1,359 millions of marks have been received from the sale of receipt-card stamps.

Compared with the Accident Insurance, which compensated total disability for employment with two-thirds of the earnings and every other reduction of capacity for work with a corresponding fraction, the compensations of the Invalid and Old Age Insurance are indeed somewhat limited, but with good reason. For a sudden industrial accident is for the sufferer an unexpected misfortune, while the gradual decline of bodily vigor in consequence of disease, sickness, organic defects, natural decay and similar causes, is inevitable in the ordinary course of life, and must betimes be provided for, by every prudent workman. In accordance with the moral obligation of every individual to make seasonable preparation, in the first place by his own efforts to meet the day of need, the Invalidity and Old Age Insurance does not extend the provision fixed by law beyond what a modest subsistence demands. And thus, besides the employer, who profits by the labor of the insured, the workman himself is called upon to contribute in equal proportion to the burden of the insurance, of which the Empire, as the third interested party, takes a share on itself. To raise the requisite funds, however, it has been found desirable to substitute for the assessment system of the Accident Insurance the procedure of covering the capital value of the annuities (formerly for certain periods, now by average premiums), since the solidarity between the present and the future contributors in the particular industrial groups of the Accident Insurance here no longer exists.

The expenses for the entire workmen's insurance are reckoned according to the experiences hitherto made.

On the year's average per head of the insured		In the year 1897, marks.		In the state of permanence, marks.
Sick insurance -----		15.45		15.45
Accident insurance {	Industrial -----	8.68		20.00
	Agricultural ---	1.02		4.30
Invalid insurance -----		5.55		17.65
Including State subsidiary -----		1.78		3.55
Total -----		25.25		43.10

The contributions of the workmen's insurance are fixed for the Invalid Insurance (since January 1, 1900), according to the procedure by average premiums; thus the contributions of this branch of insurance probably remain equal. It is the same in the case of the Sick Insurance (irrespective of the benefits now enlarged, whilst in the Accident Insurance the contributions correspond to the actual yearly expenses (assessment system) and rise still further, according to the increasing number of pensioners, up to the state of permanence. The annual contributions of the Accident Insurance are reckoned according to the procedure by average premiums as follows:

Industry 12.36 marks, agriculture 2.54 marks, in the average 6.00 marks per head of insured persons.

Therefore, the charges of the entire workmen's insurance on the year's average would be the following:

	Employers, marks.	Employed, marks.	Empire, marks.	Total marks.
Sick insurance -----	5.15	10.30	----	15.45
Accident insurance -----	6.08	-----	-----	6.08
Invalid insurance -----	4.65	4.65	2.88	12.18
Total -----	15.88	14.95	2.88	33.71

Thus the workmen on their part do not pay even the half of the whole charges (i. e. only 14.95 out of 33.71)



and generally they get more back as compensations than they pay in as contributions. These conditions of insurance are so favorable both to employers and employed as to exceed anything that could even be offered by private companies, which are compelled to earn a profit and which as a rule expend for management at least three times as much as compulsory insurance. The average results for the 50th year have been calculated according to the previous valuations during the preparations of the workmen's insurance laws, and as regards the Invalid Insurance according to the former system of covering the capital value of the annuities for certain periods.

**§ 594. Conclusion.**—The three branches of the German National Workmen's Insurance—Sickness, Accident, and Invalidity Insurance—supplementing one another mutually, form a complete organization, and have result in the formation of a new workmen's code, which in the inevitable fluctuations of modern industrial life will afford to all those in need of assistance a welcome aid, and in its further development can not fail to exercise a great and salutary influence on the economical and social condition of the working people, indeed, on the entire nation. Thus, in the years 1885-1903, on the ground of this legislation, the following compensations have already been granted to the workmen:

	Million marks.
Sickness Insurance (since 1885).	
Sick pay .....	837.5
Doctor .....	381.8
Medicines .....	307.2
Hospital .....	220.6
Burial .....	65.8
Childbed .....	26.7
Other expenses .....	28.3
1885 — 1901 .....	1867.9
1902 — 1903 .....	265.0
Millions of marks.....	2233.

	Million marks.
<b>Accident Insurance (since 1885).</b>	
Accident pensions .....	583.2
Survivors pensions .....	149.8
Med. treatment .....	27.3
Hospital .....	34.7
Burial .....	5.7
Widow's (lump sums) .....	6.2
Foreigner (lump sums) .....	5.6
1885 — 1902 .....	812.5
1903 .....	118.3
	<hr/>
	931
 <b>Invalidity Insurance (since 1891).</b>	
	Million marks.
Invd. pensions .....	357.5
Old age pensions .....	293.5
Cure .....	33.2
 <b>Reimbursements.</b>	
In case of marriage .....	27.1
In case of death .....	9.0
In case of accident .....	0.1
1891 — 1902 .....	720.4
1903 .....	134.0
	<hr/>
	854

so that until the end of 1903 about 60 millions of persons (sick, injured, invalided or their families) have received 4 milliards of marks as compensation. The workmen, however, have paid in only the small half of the contributions and have got already  $1\frac{1}{2}$  milliards—1,500 millions of marks more as compensations than they have paid in as contributions. At present  $1\frac{1}{4}$  millions of marks are expended daily in Germany for this branch of provisions for workmen alone, whilst the accumulated funds already amount to  $1\frac{1}{2}$  milliard marks, about 400 millions of which have been spent in constructing workmen's dwellings and special establishments for sick, injured, invalided and convalescent workpeople, public baths and the like institutions for the benefit of the working class.

As, however the circumstances which tend to disturb the good relations between employers and employed are everywhere much the same, the hope is natural and well justified, that the consideration and forethought which the German laborers owe to the beneficent initiative of their magnanimous Emperor and to the ready sacrifice of their employers will find an echo in other civilized countries, for the welfare of the human race and the consolidation of social peace and concord!



## CHAPTER XXXV.

### THE GERMAN WORKMEN'S INSURANCE CODE OF JULY 19, 1911.

Sec.	Sec.
595. Introduction.	599. Invalidity and survivors insurance.
596. General features.	600. Analysis of the code and the introductory law.
597. Sickness insurance.	
598. Accident insurance.	

**§ 595. Introduction.\***—The German Workmen's Insurance code of 1911 is translated for the United States Bureau of Labor by Henry J. Harris, Ph. D. He introduces his translation by an admirable prefatory note, which summarizes the history, purposes and scope of the Imperial legislation on the subject. He says:

"The law of July 19, 1911, is a codification of all the legislation relating to the several branches of workmen's insurance in the German Empire. Previous to the date of this act the sickness insurance, the accident insurance, and the invalidity insurance were each regulated by a separate law or series of laws. At the time when the compulsory insurance system was introduced into Germany the plan of having the three branches of insurance adopted simultaneously was considered, but was declared by Bismarck to be a task of such magnitude that no other plan was feasible except to introduce the various branches of insurance one after the other. Furthermore, it was found necessary to introduce the insurance laws for the different industries, one after the other, so that while the first accident insurance law was enacted in 1884 it required five additional laws to cover all the industries which were intended to be included in this branch of the workmen's insurance system. A

\*See Bulletin of the Bureau of Labor No. 96, Sept., 1911, of U. S. Government.

somewhat similar procedure was followed in the case of the sickness insurance and the invalidity and old-age insurance. All of the insurance laws were revised and to some extent codified between the years 1899 and 1903, but it was not until 1910 that a single law covering all phases of workmen's insurance was drafted by the German government. The codification of 1911 therefore represents the experience of a quarter of a century in a system of compulsory insurance covering practically the whole industrial population of the German Empire.

**§ 596. General features.**—The new workmen's insurance code has retained the former general scheme of organization; although frequently advocated, there has been no attempt to consolidate the organizations conducting the sickness, accident, and invalidity insurance. Separate administrative bodies conduct these three branches of insurance, while the new branch, the insurance for widows and orphans, or as the law terms it, "the survivors' insurance," is carried on by the invalidity insurance organizations. A new feature which the code introduces is the system of government offices to supervise the insurance organizations. The first of these new institutions is designated in the following translation as "local insurance office" (*Versicherungsammt*) and covers a district of small area, usually of one or a few communes or parishes. Above the local insurance office is the so-called "superior insurance office" (*Oberversicherungsammt*), which supervises operations in insurance matters and whose most important function is the work formerly performed by the arbitration courts for workmen's insurance which were abolished by the new law. The central administrative body is the Imperial insurance office (*Reichsversicherungsammt*), except in the case of Bavaria, the Kingdom of Saxony, Wurtemberg, and Baden, where state insurance offices

(Landesversicherungsamt) take the place of the Imperial insurance office for insurance organizations located entirely within the boundaries of these states. In all of these government offices the plan of having representatives of the employers and of the insured persons participate to a large degree in the administration of the insurance has been retained.

**§ 597. Sickness insurance.**—The workmen's insurance code provides for six types of sickness insurance funds: local sick funds, rural sick funds, establishment sick funds, guild sick funds, miner's sick funds, and substitute sick funds. The former communal or parish sickness insurance has been abolished. The local insurance funds provide the insurance for the greater number of insured persons, and in particular for persons not included in any of the other groups mentioned above; these funds are practically a continuation of the former local insurance funds and are also intended to provide for persons formerly included in the communal sickness insurance. The rural sick funds are a new institution and are not necessarily confined to rural districts, but may also exist for cities; these funds provide for the sickness insurance of household servants, persons engaged in home working industries, casual laborers, farm laborers, etc. This is the only new type of insurance fund provided for the sickness insurance. The other types of funds are practically the same as those instituted by former sickness insurance laws; the so-called substitute funds are merely the mutual-aid funds which are recognized under the preceding laws and which are allowed to continue, though under more careful supervision and with certain restrictions as to size, etc. The tendency of the new law has been to encourage sick funds of larger size, as experience had shown that funds with a smaller number of members did not possess a sufficient extensive actuarial basis.

The groups of persons brought under the compulsory sickness insurance for the first time are the following: Household servants, clerks and apprentices in pharmacies, members of orchestras and theatrical companies, teachers and tutors, persons engaged in home-working industries, ships' crews of German sea-going vessels and the crews of vessels engaged in inland navigation. Voluntary insurance is permitted under more liberal conditions than heretofore.

During the discussion of the provisions of the code an attempt was made to change the proportion of contributions paid by the employer and by the insured persons. As finally enacted, the existing plan of having employers pay one-third and the insured persons two-thirds of the contributions has been retained; in the case of members of guild sick funds, however, the contributions may be levied in the proportion of one-half upon each party.

The benefits of the sickness insurance are practically unchanged in the new law and consist of medical care, a sick wage, hospital care, and care in the home, together with an allowance for the family in the case of hospital treatment; in addition, a pecuniary sick benefit is paid in maternity cases for a period of eight weeks. The funeral benefit consists of 20 times the amount of the wage of the insured person used as a basis for computing dues and benefits. Under the law, the sick funds are allowed to vary these benefits in a number of ways, and likewise the funds may extend the amount and duration of the benefits in certain cases.

**§ 598. Accident insurance.**—The organization of the accident insurance is practically unchanged under the new code. The functions of the former subsidiary insurance institutes (*Versicherungs-Anstalten*) have been slightly increased, and in the future they will be designated as <sup>5</sup>"branch institutes" (*Zweig-Anstalten*).



Their special function is to provide insurance for petty business undertakers of all kinds, and more especially in the building trades, livery and hauling, inland navigation, and marine navigation. These branch institutes are subsidiary organizations of the accident association for these industries and are administered either directly or indirectly by the governing bodies of the accident associations, though the branch institutes as heretofore have a legal and formal separate existence.

The classes of persons insured are still composed of workmen and administrative or operating officials; the latter, however, only in so far as their annual earnings do not exceed 5,000 marks (\$1,190), this amount having previously been 3,000 marks (\$714).

The new industry branches included in the insurance are certain groups of breweries, pharmacies, tanneries, bath establishments, fishing in inland waters, fish culture, ice cutting, and establishments conducted as a business for the keeping of livery stables for draft animals, riding animals, and breeding animals, and the keeping of conveyances and riding animals.

The accident insurance for agriculture and forestry and for marine navigation is practically unchanged.

The system of collecting assessments each year to cover the expenditures for the preceding year, modified by a reserve, the interest of which is intended to reduce the annual assessments, has not been changed. As heretofore, the branch institutes, however, annually collect premiums sufficient to cover the capitalized value of the pension granted instead of using the assessment system. Annual salaries in excess of 1,800 marks (\$428) have only one-third of the excess counted. In agriculture a different basis of assessment may be used, namely, the so-called "labor-need," though the land tax, the area cultivated, or some other basis may also be used. No change has been made in the system of risk tariffs for industrial establishments.

The definition of industrial accidents has gradually been made more exact during the 25 years' experience under the various laws. The code does not include industrial or occupational diseases as accidents, but authorizes the federal council to include such diseases under accident insurance. The definition of an industrial accident as now prescribed specifies that it must be a sudden event occurring at a specific time, and having a causal connection with the operation of the establishment.

The benefits of the accident insurance have not been changed by the new code.

**§ 599. Invalidity and survivors' insurance.**—The invalidity insurance is conducted by territorial organizations, these organizations being directed by committees, etc., consisting one-half of employers and one-half of insured persons. The governments, either state or local, appoint the officials who conduct the current affairs of these organizations. For a few industries, such as transportation, mining, etc., "special institutes" are allowed to conduct the insurance of persons engaged in these industries.

The new feature of the insurance code is that relating to survivors' insurance, or, as it is popularly called, widows' and orphans' insurance. This branch of insurance is to be conducted by the territorial organizations which administer the invalidity insurance.

The new groups of persons included under the invalidity insurance are clerks and apprentices in pharmacies and members of orchestras and theater companies. By the decrees of the federal council the invalidity insurance has already been extended to persons engaged in home-working trades, to persons engaged in tobacco industries, and to a large proportion of persons engaged in textile industries. An effort has been made in the code to make the group of persons covered by the invalidity

insurance identical with that covered by the sickness insurance. The provisions as to voluntary insurance and as to the continuation of insurance in the case of a person who ceases to be employed in an industry requiring compulsory insurance have been made more liberal. An important innovation is that designated as "voluntary supplementary insurance," according to which the amount of the invalidity pension (but not of the other benefits) can be increased by payments of sums of 1 mark (23.8 cents) at any time and in any amount. Persons who have made such payments receive a supplementary pension equal to an annual sum consisting of 2 pfennigs (0.48 cents) for each mark so paid, multiplied by the number of years between the year of payment and the date of invalidity.

On account of the new features of the invalidity insurance, an increase in dues was necessary; the increase in the lower wage classes was one-fifth or less, while in the three upper wage classes, namely, those persons earning 550 marks (\$130.90) or over, the increase in contributions is about one-third. As before, the contributions are paid one-half by the employers and one-half by the insured person, while the Empire annually grants a subsidy of 50 marks (\$11.90) to each pension.

The former method of payments of contributions through stamps pasted on receipt cards has been retained; in the case of persons engaged for periods of time such as by a quarter or by the year, the stamps may be affixed at such intervals of time. Under certain circumstances the insured person himself may affix the stamps and require the employer to repay one-half of the contribution. All cards must be renewed at the local office of the insurance institute at least once in two years. The new code restricts the possibility of making effective a claim to a new valid pension which has once lapsed; in particular, the conditions are more strict for persons who have passed their fortieth year of life, and

especially difficult for those who have passed their sixtieth year.

Benefits are paid on the occurrence of "invalidity"; that is, a disability caused by sickness or physical defect which prevents the insured person from earning one-third of the amount which a normal person of similar training and status in life is able to earn. In this case the previous occupation and the person's aptitude for another occupation are taken into account in ascertaining his right to a pension.

Under the code, the invalidity pension consists of an annual subsidy from the Empire, a basic amount fixed by the number of contributions paid and a subsidy of one-tenth of the pension for each child of the pensioner under 15 years of age, with a maximum of five-tenths.

An old-age pension is paid after the completion of the seventieth year of life without regard to the physical condition of the claimant, and has not been changed as to its amount or as to the age limit.

The new widow's pension is a benefit paid to the invalid widow of an insured person, so long as she remains unmarried, and consists of an imperial subsidy of 50 marks (\$11.90) annually, plus three-tenths of the invalidity pension of the deceased. The orphan's pension is paid to the orphans of the insured person under 15 years of age and consists of an annual subsidy from the Imperial government equal to 25 marks (\$5.95) and three-twentieths of the invalidity pension of the deceased for one orphan, and one-fortieth of this pension for each additional orphan. The orphan's pension, however, may not exceed the amount of the invalidity pension of the deceased, and the total sum of the orphan's and widow's pensions may not be more than one and one-half times the pension of the deceased.

A new benefit designated as "widow money," is paid to such persons on the death of the insured person and

is equal to the amount of one year's pension of the widow, plus 50 marks (\$11.90) Imperial subsidy.

Another new benefit is the orphan's benefit, paid when the orphan completes his fifteenth year of life, and is equal to eight times the monthly amount of the orphan's pension, plus 16 2-3 marks (\$3.97) Imperial subsidy.

The date when all of the provisions of the new code are to be put into force is to be announced in the *Reichs-Gesetzblatt*. The issues of this gazette up to November 1, 1911, have not contained any orders on this subject.<sup>1</sup>

<sup>1</sup> The periodical *Soziale Praxis* of Oct. 19, 1911, contained the following statement:

"The postponement of the date when the workmen's insurance code goes into force to Jan. 1, 1913, is announced by the *Zentralblatt der Reichsversicherung*.

"The difficulties which developed in drawing up the administrative regulations for carrying into effect the imperial insurance code, both on the part of the imperial and of the State officials, made this postponement necessary. In particular the merging of the existing rules with the new regulations has required more time than was anticipated, and likewise the work necessary in connection with the new application of the insurance status to casual laborers and to the home-working industries showed that the earlier date was impossible, though heretofore the date of July 1, 1912, has been assumed to be the one which would be adopted.

"On the other hand, attention should be called to the fact that the regulations for the introduction of the insurance code, as stated in the introductory law to the code, came into force immediately upon their publication, namely, on Aug. 1, 1911, and that the provisions relating to the validity and survivors' insurance (Book Four) come into force on Jan. 1, 1912, without fail. The only question, therefore, is in regard to the regulations concerning the sickness insurance and the accident insurance. According to other reports, a definite date for putting these two parts of the insurance code into force has not yet been determined."

§ 600. Analysis of the code and the introductory law.

BOOK ONE.—GENERAL PROVISIONS.

	Article.
Section One.—Scope of the imperial insurance-----	1, 2
Section Two.—Carriers of the imperial insurance—	
I. Designation -----	3
II. Legal competence -----	4
III. Administrative bodies -----	5-11
IV. Honorary offices -----	12-24
V. Assets -----	25-29
VI. Supervision -----	30-34
Section Three.—Insurance authorities—	
1. General provisions -----	35
II. Local insurance offices—	
1. Establishment -----	36-38
2. Composition -----	39-55
3. Committees -----	56-58
4. Costs -----	59, 60
III. Superior insurance offices—	
1. Establishment -----	61-67
2. Composition -----	68-76
3. Chambers -----	77, 78
4. Supervision—Costs -----	79-82
IV. Imperial Insurance Office—State insurance offices—	
1. Jurisdiction—Seat -----	83, 84
2. Composition -----	85-97
3. Senates -----	98-102
4. Accounting bureau—Costs -----	103, 104
5. State insurance offices-----	105-109
Section Four.—Other general provisions—	
I. Authorities -----	110-114
II. Legal assistance -----	115-117
III. Benefits -----	118-121
IV. Medical treatment -----	122, 123
V. Time limits -----	124-134
VI. Notifications -----	135, 136
VII. Fees and stamp taxes-----	137, 138
VIII. Prohibitions and penalties-----	139-148
IX. Local wage rate-----	149-152
X. Place of employment-----	153-156
XI. Legislation of foreign countries-----	157, 158
XII. General definitions—	
1. Employments subject to insurance-----	159
2. Earnings -----	160
3. Agriculture -----	161
4. Persons engaged in home-working industries	162

	Article.
5. German seagoing vessels-----	163
6. Fiscal year -----	164

## BOOK TWO.—SICKNESS INSURANCE.

## Section One.—Scope of the insurance—

I. Compulsory insurance-----	165-175
II. Voluntary insurance -----	176-178

## Section Two.—Benefits of the insurance—

I. General provisions as to benefits-----	179-181
II. Sickness benefits -----	182-194
III. Maternity benefits -----	195-200
IV. Funeral benefits -----	201-204
V. Benefits to the family-----	205
VI. General provisions -----	206-224

## Section Three.—Carriers of the insurance—

I. Kinds of sick funds-----	225
II. General local sick funds and rural sick funds----	226-238
III. Special local sick funds-----	239-244
IV. Establishment sick funds and guild sick funds----	245-257
V. Controversies -----	258
VI. Benefits of equal value-----	259-263
VII. Combination, separation, dissolution, and closing—	
1. Local and rural sick funds-----	264-269
2. Establishment and guild sick funds-----	270-279
3. Procedure -----	280-305

## Section Four.—Constitution—

I. Membership—	
1. Beginning and termination-----	306-316
2. Registration -----	317-319
II. Constitution -----	320-326
III. Administrative bodies of the funds—	
1. Organization of local and rural sick funds----	327-337
2. Organization of establishment and guild sick funds -----	338-341
3. Duties -----	342-348
IV. Employés and officials of the fund-----	349-362
V. Administration of resources-----	363-367
VI. Relation to physicians, dentists, hospitals, and pharmacies -----	368-376

## Section Five.—Supervision ----- 377-379

## Section Six.—Raising of the funds—

I. Contributions -----	380-392
II. Payment of the contributions-----	393-405

## Section Seven.—Federations of funds.—Sections----- 406-415

## Section Eight.—Special occupations—

I. General provisions -----	416
II. Agriculture -----	417-434

	Article.
III. Servants .....	435-440
IV. Temporary employment .....	441-458
V. Itinerant trades .....	459-465
VI. Home-working industries .....	466-493
VII. Apprentices .....	494
Section Nine.—Miners' sick funds.....	495-502
Section Ten.—Substitute funds—	
I. Authorization .....	503-516
II. Relation to sick funds.....	517-525
Section Eleven.—Final provisions and penal provisions—	
I. Final provisions .....	526-528
II. Penal provisions .....	529-536

### BOOK THREE.—ACCIDENT INSURANCE.

Part One.—Industrial accident insurance—	
Section One.—Scope of the insurance.....	537-554
Section Two.—Benefits of the insurance.....	555-622
Section Three.—Carriers of the insurance—	
I. The accident associations and other carriers of the insurance .....	623-629
II. Composition of the accident associations.....	630-634
III. Changes in the status of the accident associations..	635-648
Section Four.—Organization of the accident associations—	
I. Membership and the right to vote.....	649-652
II. Registration of the establishment.....	653-656
III. Register of establishments.....	657-663
IV. Changes in the undertakers—Changes in the estab- lishment and in its membership in the accident association .....	664-674
V. Constitution .....	675-684
VI. Administrative bodies of the accident association..	685-689
VII. Employés of associations.....	690-705
VIII. Formation of the risk classes.....	706-712
IX. Division and joint carrying of the burden.....	713-716
X. Administration of the assets.....	717-721
Section Five.—Supervision.....	722-725
Section Six.—Payment of the compensation—Raising of the funds—	
I. Payments through the Post Office Department....	726-730
II. Raising of the funds.....	731-748
III. Procedure in assessments and collections.....	749-776
IV. Transferring amounts to the Post Office Depart- ment .....	777-782
Section Seven.—Branch institutes—	
I. Branch institutes for the building trades—	
1. Establishment, scope, and organization.....	783-798



## Article.

2. Insurance at the expense of the undertakers—	
Premiums .....	799-824
3. Insurance at the cost of communes.....	825-835
II. Branch institutes for the keeping of riding animals and conveyances .....	836-842
Section Eight.—Additional institutions.....	843-847
Section Nine.—Accident prevention—Supervision—	
I. Regulations for accident prevention.....	848-873
II. Supervision .....	874-889
III. Special provisions for building operations and for the keeping of riding animals and conveyances .....	890-891
Section Ten.—Establishments and activities on account of public bodies.....	892-897
Section Eleven.—Liability of undertakers and their representatives—	
I. Liability to injured persons and survivors.....	898-902
II. Liability to accident associations, sick funds, etc. -	903-907
Section Twelve.—Penal provisions.....	908-914
Part Two.—Agricultural accident insurance—	
Section One.—Scope of the insurance.....	915-929
Section Two.—Benefits of the insurance.....	930-955
Section Three.—Carriers of the insurance—	
I. Accident associations and other carriers of the insurance .....	956-959
II. Changes in the status of the accident association...	960, 961
Section Four.—Organization—	
I. Membership and right to vote.....	962-966
II. Registration of the establishments.....	967
III. Changes in the undertakers—Changes in the establishment and in its membership in the accident association .....	968-970
IV. Constitution .....	971-974
V. Administrative bodies of the accident association...	975-977
VI. Employés of the association.....	978
VII. Formation of the risk classes.....	979
VIII. Division and joint carrying of the burden.....	980-982
IX. Administration of the assets.....	983, 984
Section Five.—Supervision .....	985-987
Section Six.—Payment of the compensation—Raising of the funds—	
I. Payments through the Post Office Department....	988
II. Raising of the funds—	
1. General provisions .....	989
2. Standard of the labor need and of the risk classes .....	990-1004

	Article.
3. Standard of the tax rate.....	1005-1009
4. Other standards .....	1010
5. General provisions .....	1011-1013
III. Procedure in assessments and collections.....	1014-1027
IV. Transferring amounts to the Post Office Department .....	1028
Section Seven.—Additional institutions.....	1029
Section Eight.—Accident prevention—Supervision....	1030-1032
Section Nine.—Establishments of the Empire and of the States .....	1033
Section Ten.—Regulation by State legislation.....	1034-1041
Section Eleven.—Liability of undertakers and their representatives .....	1042
Section Twelve.—Penal provisions.....	1043-1045
Part Three.—Navigation accident association—	
Section One.—Scope of the insurance.....	1046-1064
Section Two.—Benefits of the insurance.....	1065-1117
Section Three.—Carriers of the insurance.....	1118-1122
Section Four.—Organization—	
I. Membership and right to vote—Representatives....	1123-1131
II. Registration of establishments.....	1132
III. Register of establishments.....	1133, 1134
IV. Changes in the conditions of the establishment....	1135-1141
V. Constitution .....	1142-1145
VI. Administrative bodies of the accident association	1146
VII. Employés of the association.....	1147
VIII. Making the estimates—Risk tariff and special costs	1148-1156
IX. Administration of the assets.....	1157
Section Five.—Supervision .....	1158
Section Six.—Payment of the compensation—Raising of the funds—	
I. Payments through the Post Office Department....	1159-1161
II. Raising of the funds.....	1162-1164
III. Procedure in assessments and collections.....	1165-1184
IV. Transferring amounts to the Post Office Department .....	1185
Section Seven.—Branch institute for small-scale establishments engaged in navigation and in deep-sea fishing and coast fishing.....	1186-1197
Section Eight.—Additional institutions.....	1198
Section Nine.—Accident prevention—Supervision—	
I. Regulations for the prevention of accidents.....	1199-1208
II. Supervision .....	1209-1217
Section Ten.—Establishments of the Empire and of the States .....	1218
Section Eleven.—Liability of undertakers and their representatives .....	1219
Section Twelve.—Penal provisions.....	1220-1225

## BOOK FOUR.—INVALIDITY AND SURVIVORS' INSURANCE.

Section One.—Scope of the insurance—	Article.
I. Compulsory insurance .....	1226-1242
II. Voluntary insurance .....	1243, 1244
III. Wage classes .....	1245-1249
Section Two.—Benefits of the insurance—	
I. General provisions .....	1250-1254
II. Invalidity pensions .....	1255, 1256
III. Old-age pensions .....	1257
IV. Benefits of survivors .....	1258-1268
V. Medical treatment .....	1269-1274
VI. Payments in kind instead of pensions.....	1275-1277
VII. Waiting term .....	1278, 1279
VIII. Expiration of the claim.....	1280-1283
IX. Computation of insurance benefits.....	1284-1297
X. Cessation of the benefits.....	1298-1303
XI. Withdrawal of the pension.....	1304-1310
XII. Suspension of the pension—Capital sum settlements	1311-1318
XIII. Special powers of the insurance institute.....	1319, 1320
XIV. Relation to other claims.....	1321-1325
Section Three.—Carriers of the insurance—	
A. Insurance institutes—	
I. External features—	
1. Establishment .....	1326-1328
2. Local competence .....	1329-1331
3. Changes in the districts.....	1332-1337
II. Internal features—	
1. Constitution .....	1338-1341
2. Directorate .....	1342-1350
3. Committee .....	1351-1355
4. Administration of the assets.....	1356-1358
5. General provisions .....	1359
B. Special institutes—	
1. General provisions .....	1360-1374
2. Special institute of the navigation accident association .....	1375-1380
Section Four.—Supervision .....	1381, 1382
Section Five.—Payment of the benefits—Raising of the funds—	
I. Payment through the Post Office Department.....	1383-1386
II. Raising of the funds—	
1. General provisions .....	1387
2. Size of the contributions.....	1388-1392

	Article.
3. Periods of military service and of sickness—	1393, 1394
4. General cost—Special cost—	1395-1400
5. Reinsurance federation —	1401
6. Liability for the obligations of the institute—	1402
7. Distribution and refunding of the insurance benefits—	
Transferring amounts to the Post Office Department —	1403-1410
Section Six.—Procedure as to contributions—	
I. Stamps —	1411, 1412
II. Receipt cards —	1413-1425
III. Payment of contributions through the employer—	
Proof of military service and of sickness—	1426-1438
IV. Payment of the contributions by the insured persons —	1439-1441
V. Invalid contributions —	1442-1445
VI. Contributions paid in error—	1446
VII. Collecting the contributions—	1447-1457
VIII. Rounding off the amounts—	1458
IX. Controversies as to contributions—	1459-1464
X. Supervision —	1465-1470
XI. Special provisions —	1471
Section Seven.—Voluntary additional insurance—	1472-1483
Section Eight.—Final provisions and penal provisions—	
I. Sick funds —	1484
II. Special provisions for seamen—	1485, 1486
III. Penal provisions —	1487-1500

## BOOK FIVE.—RELATIONS OF THE INSURANCE CARRIERS TO EACH OTHER AND TO OTHER BODIES.

Section One.—Relations of the insurance carriers to each other—	
I. Sickness insurance and accident insurance—	1501-1517
II. Sickness insurance and invalidity and survivors' insurance —	1518-1521
III. Accident insurance and invalidity and survivors' insurance —	1522-1526
Section Two.—Relations of the insurance carriers to other bodies —	1527-1544

## BOOK SIX.—PROCEDURE.

A. Determination of benefits—	
Section One.—Determination by the insurance carrier—	
I. Inauguration of the procedure—	1545-1550
II. Sickness insurance —	1551

III. Accident insurance—	Article.
1. Reports of accidents-----	1552-1558
2. Investigation of accidents-----	1559-1567
3. Decisions of insurance carriers—	
a. General provisions -----	1568-1582
b. Decision -----	1583-1590
c. Protest -----	1591-1599
d. Special provisions for the protest against changes in permanent pen- sions -----	1600-1605
e. Final decision -----	1606, 1607
f. Other provisions -----	1608-1612
IV. Invalidity and survivors' insurance—	
1. Submission of claims -----	1613-1616
2. Preparation of the case by the local in- surance office -----	1617-1629
3. Decision of the insurance carriers-----	1630-1634
4. Renewal of applications-----	1635
Section Two.—Determination by judgment procedure—	
I. Procedure before the local insurance office—	
1. Competence of the local insurance office -----	1636-1640
2. Disqualification and rejection of mem- bers of the judgment committee----	1641- 649
3. Procedure up to the oral proceedings	1650-1659
4. Oral proceedings -----	1660-1674
II. Procedure before the superior insur- ance office -----	1675-1693
III. Procedure before the Imperial Insur- ance Office (or the State insurance office)—	
1. Sickness, and invalidity and surviv- ors' insurance -----	1694-1698
2. Accident insurance -----	1699-1706
3. General provisions -----	1707-1721
IV. Reopening of the procedure—	
1. Grounds for contesting-----	1722-1726
2. Competence -----	1727
3. Course of the procedure-----	1728-1733
4. Final provisions -----	1734
Section Three.—Special kinds of procedure—	
I. Controversies of several insurance car- riers in regard to the obligation to fur- nish compensation -----	1735-1738
II. Procedure of distribution-----	1739-1742
III. Determination of the validity of a claim to a widow's pension-----	1743

IV. Contesting the final decisions of the insurance carrier .....	1744
Section Four.—Special provisions for the navigation accident insurance—	
I. General provisions .....	1745
II. Reporting of accidents.....	1746-1752
III. Investigation of accidents.....	1753-1766
IV. Penal provisions .....	1767
V. Competence of the administrative bodies for determinations.....	1768, 1769
VI. Controversies .....	1770
B. Other judgment matters—	
I. General provisions .....	1771
II. Reporting of accidents .....	1746-1752
III. Other provisions .....	1776-1779
C. Decision procedure—	
Section One.—General provisions.....	1780-1790
Section Two.—Appeals .....	1791-1796
Section Three.—Further appeals.....	1797-1801
D. Costs and fees—	
I. Costs of the procedure.....	1802-1803
II. Fees of lawyers.....	1804-1805

**Introductory Law for the Workmen's Insurance Code:**

Section A—	
I. General provisions .....	1-6
II. Insurance authorities .....	7-13
III. Sickness insurance .....	14-42
IV. Accident insurance .....	43-63
V. Invalidity and survivors' insurance.....	64-84
VI. Procedure .....	85-99
VII. Final provision .....	100
Section B .....	101-104

# APPENDIX

## CHAPTER XXXVI.

### TEXT OF GERMAN CODE OF 1911.<sup>1</sup>

§ 601. The Act.—The German Workmen's Insurance Code of 1911, translated into English reads as follows:

#### BOOK ONE—GENERAL PROVISIONS.

##### SECTION ONE—SCOPE OF THE IMPERIAL INSURANCE.

###### ARTICLE 1.

Included in the imperial insurance (*Reichsversicherung*) are—

The sickness insurance (*Krankenversicherung*);

The accident insurance (*Unfallversicherung*);

The invalidity and survivors' insurance (*Invaliden- und Hinterbliebenenversicherung*).

###### ARTICLE 2.

Of the special provision—

Articles 165 to 536 apply to the sickness insurance;

Articles 537 to 1225 apply to the accident insurance, of which articles 537 to 914 apply to the industrial (*gewerbliche*), articles 915 to 1045 to the agricultural (*landwirtschaftliche*), and articles 1046 to 1225 to the navigation accident insurance (*See-Unfallversicherung*);

Articles 1226 to 1500 apply to the invalidity and survivors' insurance.

##### SECTION TWO—CARRIERS OF THE IMPERIAL INSURANCE.

###### I. DESIGNATION.

###### ARTICLE 3.

PARAGRAPH 1. The following are the carriers (*Träger*) of the imperial insurance unless this law provides otherwise:

For the sickness insurance, the sick funds (*Krankenkassen*);

For the accident insurance, the employers' mutual trade associations (*Berufsgenossenschaften*);<sup>2</sup>

For the invalidity and survivor's insurance, the insurance institutes (*Versicherungsanstalten*).

PAR. 2. The provisions of article 4 to 34 apply to these insurance carriers.

###### II. LEGAL COMPETENCE.

###### ARTICLE 4.

The carriers of insurance may sue and be sued.

<sup>1</sup>Reichsversicherungsordnung. (Number 3921.) Vom 19. Juli 1911. Reichs-Gesetzblatt, Aug. 1, 1911, pp. 509 ff.

<sup>2</sup>In the following translation the *Berufsgenossenschaften* have been designated as "accident associations."

## III. ADMINISTRATIVE BODIES.

## ARTICLE 5.

PARAGRAPH 1. Each carrier of insurance has a directorate. The latter represents it in and out of court. It has the status of a legal representative.

PAR. 2. Restrictions on the scope of this representation, not specified in the law, may be specified by the constitution, and have effect against third parties. The constitution may do this only in so far as this law permits.

PAR. 3. The constitution may specify, that also individual members of the directorate of the insurance carriers may represent them.

## ARTICLE 6.

PARAGRAPH 1. The directorate must notify its supervisory authority within one week of the result of each election and of each change in its composition.

PAR. 2. In so far as the directorate needs credentials, a certificate of the supervisory officials as regards its composition and the extent of its power of representation suffices.

## ARTICLE 7.

In urgent matters the directorate may take vote by correspondence.

## ARTICLE 8.

PARAGRAPH 1. If decisions of the administrative bodies of the insurance carrier are contrary to the law or the constitution, the president of the directorate shall appeal from them to the supervisory authority.

PAR. 2. The appeal effects a stay.

## ARTICLE 9.

In the administrative bodies their president has the right to vote, and if there is a tie he gives the casting vote.

## ARTICLE 10.

The required number of substitutes for the members shall be elected.

## ARTICLE 11.

The sessions are not public.

## IV. HONORARY OFFICES.

## ARTICLE 12.

PARAGRAPH 1. Only Germans who have attained their majority are eligible to the administrative bodies of the insurance carriers.

PAR. 2. The following are not eligible:

1. Persons who in consequence of criminal sentence have lost the right to hold public office, or who are being prosecuted at the time for a crime or misdemeanor which may cause the loss of this right, in case full proceedings have been begun against them;
2. Persons who are limited in the disposition of their property as the result of a court decree.

## ARTICLE 13.

PARAGRAPH 1. Whoever regularly employs at least one person subject to insurance, and this person is insured with the insurance carrier, is eligible as a representative of the undertakers (*Unternehmer*)<sup>1</sup> or of other employers.

<sup>1</sup>The undertaker of an establishment is the one for whose account the establishment is conducted. See sec. 633.



PAR. 2. Managers of establishments having a power of attorney have the same status as undertakers or other employers; business managers, and establishment officials of participating employers (art. 332, par. 2), have the same status as employers in the election to administrative bodies of sick funds; the legal representatives of members of an accident association have the same status as undertakers in the elections to the administrative bodies of accident associations.

PAR. 3. Members of a public authority with supervisory powers over a carrier of insurance are not eligible.

#### ARTICLE 14.

PARAGRAPH 1. Only persons insured in the insurance carrier are eligible as representatives of the insured persons.

PAR. 2. In the sickness, invalidity, and survivors' insurance, the insured persons will be accredited to the employers in the composition of the administrative bodies, if they employ regularly more than two persons subject to insurance. In the accident insurance insured members of the accident associations are accredited to the undertakers if they employ regularly at least one person subject to insurance.

#### ARTICLE 15.

PARAGRAPH 1. The representatives of the undertakers and of other employers and of the insured persons are elected according to the principles of proportional representation.

PAR. 2. If the voting is restricted to nomination lists, the constitution determines the time limit for their submission; the election is secret, without affecting the nomination lists.

#### ARTICLE 16.

PARAGRAPH 1. The term of office is four years.

PAR. 2. After the expiration of this term, the elected persons remain in office until their successors take office.

PAR. 3. Whoever ceases to hold office may be re-elected.

#### ARTICLE 17.

PARAGRAPH 1. Whoever is eligible as an undertaker or other employer may refuse election only under the following conditions:

1. If he has completed his sixtieth year of age.
2. If he has more than four legal children under age; those of his children adopted by another will not be included herewith.
3. If he is prevented by sickness or infirmity from administering the office as required by the regulations.
4. If he has more than one guardianship or trusteeship. The guardianship or trusteeship of children of the same parents counts only as one such; two coguardianships are equal to one guardianship; one honorary office of the imperial insurance is equal to one coguardianship.
5. If he employs servants only.

PAR. 2. After a minimum tenure of office of two years, re-election for the next term may be declined.

PAR. 3. The constitution may also specify other reasons for declining.

#### ARTICLE 18.

An undertaker or other employer declining an election without permissible cause may be punished by the president of the directorate by a fine up to 500 marks [\$119].

## ARTICLE 19.

The president may fine a member of the directorate who fails to perform his duties not to exceed 50 marks [\$11.90], and on repetition with a fine not to exceed 300 marks [\$71.40]; if, however, the matter relates to a sick fund, then only up to 100 marks [\$23.80]. He must remit the fine if a sufficient excuse is established afterwards.

## ARTICLE 20.

The decision of a supervisory authority in appeals on cases referred to in articles 18 and 19 is final.

## ARTICLE 21.

PARAGRAPH 1. The persons elected administer their offices without compensation as an honorary office.

PAR. 2. The insurance carrier refunds them their cash expenditures and allows to the representatives of the insured persons reimbursement for earnings lost or in its place a lump sum for loss of time. The constitution may also allow such a lump sum to the representatives of undertakers or other employers.

PAR. 3. The determination of the lump sums requires confirmation by the authority which approves the constitution.

PAR. 4. The honorary members of the directorate shall not at the same time be salaried officials of the insurance carrier.

## ARTICLE 22.

The representatives of the insured persons must notify their employer of each call to a meeting of the administrative bodies. If this is done within the required time their absence from work does not give the employer a sufficient reason to discontinue the relation of employer without observance of the regular period of notice of dismissal.

## ARTICLE 23.

PARAGRAPH 1. The members of administrative bodies are liable for faithful business administration to the carriers of insurance in the same manner as guardians to their wards. The insurance carrier may relinquish claims on account of such liability only with the approval of the supervisory authority. The latter may enforce the liability in the place of and at the expense of the carrier.

PAR. 2. A member who intentionally injures the insurance carrier shall be punished with confinement in jail. In addition the penalty can also include the loss of civic rights. If the member has committed an act to procure for himself or some other person a pecuniary advantage, in addition to the prison sentence a fine not to exceed 3,000 marks [\$714] may be imposed.

PAR. 3. During a discussion of those questions which affect the personal interests of a member or his relatives the member must abstain from taking part in the discussion and voting, and during the discussion must leave the room where the discussion takes place.

## ARTICLE 24.

PARAGRAPH 1. If facts become known concerning an elected person which prove his ineligibility or his untrustworthiness for the conduct of business, he shall by resolution be removed from office, either by the directorate, or, in the case of a sick fund, by the supervisory authority.

PAR. 2. Before the passing of such a resolution he shall be given an opportunity to make a statement.

PAR. 3. An appeal against the resolution is permissible to the Imperial Insurance Office (decision senate) (*Beschlussenat*), or, if the case relates to a sick fund, to the superior insurance office (decision chamber) (*Beschlusskammer*).

PAR. 4. An elected person will be relieved of his office on his own application by resolution of the directorate if during his term of office one of the grounds of refusal specified in article 17, paragraph 1, numbers 2 to 5, becomes effective.

#### V. ASSETS.

##### ARTICLE 25.

PARAGRAPH 1. The means of insurance carriers shall be used only for legally prescribed and permissible purposes.

PAR. 2. Revenues and expenditures shall be accounted for separately and the assets kept safe separately.

PAR. 3. The insurance carriers shall engage only in such business as is assigned to them by the law.

##### ARTICLE 26.

PARAGRAPH 1. The assets shall be invested at interest like trust funds (arts. 1807 and 1808 of the Civil Code) in so far as this law does not permit other investments.

PAR. 2. The assets may also be invested in securities in which the laws of the States permit the investment of trust funds, and also in such mortgages, payable to the holder, of German joint-stock mortgage banks, on which the imperial bank (*Reichsbank*) makes loans in Class I.

##### ARTICLE 27.

PARAGRAPH 1. The highest administrative authority may also approve the investment of the assets in loans of communes or unions of communes in so far as this is not already permissible according to article 26, paragraph 1.

PAR. 2. The authority may limit the investment in certain classes of interest-bearing securities to a specified amount.

PAR. 3. If the district of the insurance carrier embraces territories or parts of territories of several federal States, the approval of their highest administrative authority is required for such investments.

PAR. 4. The highest administrative authority may permit, with the right of withdrawing this permission, that temporarily available assets may be invested in another manner.

##### ARTICLE 28.

PARAGRAPH 1. Arrears shall be collected in the same manner as communal taxes. The staying effect of objections to the obligation of payment is regulated according to the State laws.

PAR. 2. The constitution of the insurance carrier may determine, as far as not already prescribed by the State laws, that the procedure of collection be preceded by a procedure of warning, and that a fee may be collected for such procedure of warning. This fee is collected in the same manner as arrears. The determination of its amount requires the approval of the supervisory authority.

PAR. 3. Arrears have preference of other claims according to article 61, number 1, of the bankruptcy law (*Konkursordnung*).

##### ARTICLE 29.

PARAGRAPH 1. The claim to arrears lapses, as far as they have not been fraudulently withheld, in two years after the expiration of the calendar year when they are due.

PAR. 2. The claim for refund of contributions lapses in six months after the expiration of the calendar year of their payment, with reservation as to article 1446, paragraph 2, and articles 1462 and 1464.

PAR. 3. The claim for benefit payments from the insurance carrier lapses in four years after they are due, in so far as this law does not prescribe otherwise.

## VI. SUPERVISION.

## ARTICLE 30.

The right of supervision of the supervisory authority consists in seeing that the law and constitution are observed.

## ARTICLE 31.

PARAGRAPH 1. The supervisory authority may examine at any time the business and accounting management of the insurance carrier.

PAR. 2. The members of its administrative bodies, its district agents (*Vertrauensmänner*), officials, and employés must produce, on demand, to the supervisory authority or its representatives all books, bills, vouchers, and records, and also documents, securities, and assets in their custody, and give all information demanded in the execution of the right of supervision.

PAR. 3. The supervisory authority may require the persons specified in paragraph 2, under reservation of article 985, paragraph 2, to observe the law and the constitution, by fines not to exceed 1,000 marks [\$238].

## ARTICLE 32.

The supervisory authority may demand that the administrative bodies be called into session; and if such demand is not complied with, may themselves call meetings and take charge of the proceedings.

## ARTICLE 33.

The supervisory authority decides, without derogation of the rights of third parties and as far as the law does not prescribe otherwise, in disputes as to the rights and obligations of the administrative bodies, as to the interpretation of the constitution and as to the validity of elections.

## ARTICLE 34.

PARAGRAPH 1. Subject to the supervision are also convalescent homes, medical institutions, and sanatoria (*Genesungsheime, Heil- und Pflegeanstalten*) created and maintained by the insurance carrier.

PAR. 2. The supervisory authority may in its inspections call to its assistance representatives of employers and of the insured persons.

## SECTION THREE.—INSURANCE AUTHORITIES.

## I. GENERAL PROVISIONS.

## ARTICLE 35.

PARAGRAPH 1. The public authorities of the imperial insurance are—

The local insurance offices (*Versicherungsämter*) (arts. to 60);

The superior insurance offices (*Oberversicherungsämter*) (arts. 61 to 82);

The Imperial Insurance Office (*Reichsversicherungsamt*) and the State insurance offices (*Landsversicherungsämter*) (arts. 83 to 109).

PAR. 2. As far as this law does not regulate the business management and the procedure of the insurance authorities, it shall be done, with reservations of article 109, paragraph 1, by imperial decree with the approval of the Federal Council.

## II. LOCAL INSURANCE OFFICES.

## 1. Establishment.

## ARTICLE 36.

PARAGRAPH 1. In each inferior administrative authority there shall be established a section for workmen's insurance (local insurance

office). The highest administrative authority may specify that there shall be established for the districts of several inferior administrative authorities a joint local insurance office.

PAR. 2. The State governments of several federal States may agree to establish for their territories or parts thereof a joint local insurance office in an inferior administrative authority.

#### ARTICLE 37.

PARAGRAPH 1. The local insurance offices take cognizance of the business of the imperial insurance according to the provisions of this law, and impart information in affairs pertaining to the imperial insurance.

PAR. 2. They may support the insurance carriers in the latter's affairs according to the provisions of this law.

PAR. 3. The State government may assign to the local insurance offices other duties pertaining to miners' insurance.

#### ARTICLE 38.

In federal States in which the composition of the State authorities does not permit of the establishment of local insurance offices at the inferior administrative authorities and where there exists only a superior insurance office, the local insurance offices can also be established as independent authorities. The highest administrative authority shall specify the details herewith.

### 2. Composition.

#### ARTICLE 39.

PARAGRAPH 1. The director of the inferior administrative authority is the president of the local insurance office. One or more permanent substitutes of the president are to be appointed. Any person qualified by education and experience in workmen's insurance affairs may be appointed a substitute.

PAR. 2. The appointment requires the approval of the superior insurance office, in so far as the permanent substitutes are not appointed according to State law in the same manner as the higher administrative officials.

PAR. 3. If the local insurance office is created in a communal authority, the substitutes are appointed by the president of the union of communes whose district contains that of the local insurance office. Where the State law prescribes a confirmation for the election of higher communal officials, it is also applicable to the appointment of substitutes for the president of the local insurance office.

#### ARTICLE 40.

PARAGRAPH 1. In the cases specified by the law there shall be called in representatives of the insurance (*Versicherungsvertreter*) as associates (*Beisitzer*) of the local insurance office.

PAR. 2. They shall be selected one-half from the employers and one-half from the insured persons.

#### ARTICLE 41.

PARAGRAPH 1. Their total number must be at least 12; with the approval of the superior insurance office, the number may be augmented by the local insurance office, or by the former after a hearing of the local insurance office.

PAR. 2. A representative of the insurance shall not also be a salaried official of the local insurance office, or a representative of the insurance at another local insurance office, or an associate in a superior insurance office, or a nonpermanent member of the imperial or of a State insurance office.

## ARTICLE 42.

PARAGRAPH 1. Representatives of the insurance are elected by the members of the directorates of those sick funds which have at least 50 members in the district of the local insurance office.

PAR. 2. The members of the directorates of the three groups of funds mentioned herewith participate in the election in so far as they have at least 50 members in the district of the local insurance office; of the substitute funds, and funds located outside of the local insurance office, moreover only if they notify in due time the person in charge of the election of their participation and prove the number of their members in this district; these three groups of funds are—

1. The miners' sick funds;
2. The substitute sick funds;
3. The seamen's funds, and other associations of seamen for the preservation of their rights, approved by the authorities.

PAR. 3. In place of the representatives of the insured persons in the directorate, the votes shall be cast by—

In the case of the miners' sick funds, the elders of the miners' sick funds competent for the district of the local insurance office;

In the case of the substitute funds which have local administrative offices, the business managers of the local administrations competent for the district of the local insurance office.

## ARTICLE 43.

The number of votes of a fund depends on its number of members in the district of the local insurance office, and shall be determined by the latter before each election. The number of votes shall be evenly divided among the members of the directorates and among the persons entitled to vote in their place according to article 42, paragraph 3.

## ARTICLE 44.

PARAGRAPH 1. In the directorates of the funds the members who are employers take part only in the election of representatives of the employers, the members who are insured persons in the election of representatives of the insured persons.

PAR. 2. Directorates which contain no employers, participate only in the election of the representatives of the insured persons.

PAR. 3. In the case of funds of the kind designated in article 42, paragraph 2, which have no representatives of the insured persons in the directorate, the voting is done by other workmen's representatives who are in the fund.

PAR. 4. Whatever relates to the directorates is also applicable to the persons entitled to vote in their place according to article 42, paragraph 3.

## ARTICLE 45.

PARAGRAPH 1. The voting is done by written ballot and on the principle of proportional representation. The highest administrative authority decrees the election regulations.

PAR. 2. The president of the local insurance office shall conduct the election.

PAR. 3. Election disputes are decided finally by the superior insurance office.

## ARTICLE 46.

PARAGRAPH 1. For the representatives of the insurance, substitutes are specified in the same manner according to need.

PAR. 2. Substitutes replace representatives of the insurance who leave before the expiration of their terms.

## ARTICLE 47.

PARAGRAPH 1. Only men who reside or have the seat of their establishment or are employed in the district of the local insurance office, and who are not ineligible according to article 12, are eligible.

PAR. 2. Only insured persons, their employers, and the latter's managers of establishments with power of attorney are eligible. Insured persons are accredited to the employers, if they regularly employ more than two persons subject to insurance.

PAR. 3. In the case of local insurance offices on the seacoast, navigators of practical experience who are not shipowners, or managers of ship-owning establishments (shipping agents, arts, 492 to 499 of the Commercial Code), or who do not hold a power of attorney, may also be elected as representatives of the insured persons.

## ARTICLE 48.

At least one-half of the representatives of the insurance must be participants in the accident insurance.

## ARTICLE 49.

PARAGRAPH 1. At least one-third of the representatives of the insurance shall reside or be employed at the seat of the local insurance office itself, or not more than 10 kilometers [6.21 miles] distant from it.

PAR. 2. The principal branches of industry, especially agriculture, and the different parts of the district shall be considered in the election.

PAR. 3. The highest administrative authority may decree special or exceptional provisions herewith.

## ARTICLE 50.

PARAGRAPH 1. Articles 16, 17, and 22 are correspondingly applicable; but the local insurance office determines the admissibility of other reasons for declining.

PAR. 2. As long and in so far as no election takes place, or the persons elected refuse to perform their duties, the president of the local insurance office appoints representatives from the number of eligible persons.

## ARTICLE 51.

PARAGRAPH 1. Whoever declines the election or appointment without a permissible reason, may be punished by the president of the local insurance office with a fine not to exceed 50 marks [\$11.90].

PAR. 2. The local insurance office may release a representative from his office if a sufficient reason exists.

PAR. 3. On appeal the superior insurance office (decision chamber) decides finally.

## ARTICLE 52.

PARAGRAPH 1. If facts become known concerning a representative of the insurance which prove his ineligibility or which show that he is guilty of malfeasance of his office, he may be removed from his office by the president.

PAR. 2. On appeal the superior insurance office (decision chamber) decides finally.

## ARTICLE 53.

PARAGRAPH 1. The president of the local insurance office obligates the representatives of the insurance to the faithful discharge of their duties.

PAR. 2. The president may punish a representative who fails to perform his duties with a fine not to exceed 30 marks [\$7.14] and on repetition not to exceed 100 marks [\$23.80]. He must remit the fine if afterwards a sufficient excuse is established.

PAR. 3. On appeal the Imperial Insurance Office (decision chamber) decides finally.

#### ARTICLE 54.

PARAGRAPH 1. The representatives administer their office without compensation as an honorary office.

PAR. 2. The local insurance office shall reimburse them for their cash expenditures.

PAR. 3. In addition it shall grant to the representatives of the insured persons reimbursements for lost earnings, or in place thereof a lump sum for their loss of time. It may also allow such a lump sum to the representatives of the employers. The lump sums require the approval of the superior insurance office (decision chamber).

#### ARTICLE 55.

The local insurance office may assign specified official duties to the representatives as its district agents.

### 3. Committees.

#### ARTICLE 56.

PARAGRAPH 1. Each local insurance office creates one or more judgment committees for matters which this law assigns to the judgment procedure (*Spruchverfahren*).

PAR. 2. The judgment committee (*Spruchausschuss*) consists of the president of the local insurance office and of one representative for the employers and one for the insured persons.

#### ARTICLE 57.

PARAGRAPH 1. Each local insurance office creates a decision committee (*Beschlussausschuss*) for matters which this law assigns to the decision procedure (*Beschlussverfahren*).

PAR. 2. The decision committee consists of the president of the local insurance office and of two representatives of the insurance. Of these, the representatives of the employers and of the insured persons each elect one from among themselves, together with at least one substitute; the elections of the two parties shall be separate, shall be by simple majority of votes, and the term of office shall be four years.

#### ARTICLE 58.

The highest administrative authority can specify how far the local insurance office may call in for the decision procedure technical government and communal officials of its district as advisors (*Beiräte*) with consultative vote.

### 4. Costs.

#### ARTICLE 59.

PARAGRAPH 1. The federal State defrays all costs of the local insurance office. If the local insurance office is created in a communal authority, they are defrayed by the union of communes whose district embraces that of the local insurance office. The highest administrative authority determines the division of costs, if there is a joint local insurance office created for the districts of several inferior administrative authorities.

PAR. 2. With the exception of the allowances of the insurance representatives, the insurance carriers have to defray the cash expenditures originating from judicial matters (arts. 1591 to 1674) so far as the cash expenditures are not to be defrayed according to paragraph 3.

PAR. 3. Fines, according to article 51, paragraph 1, article 53, paragraph 2, article 1577, paragraph 1, article 1617, paragraph 1, article 1626, paragraph 1, article 1652, paragraph 3, and article 1664, paragraph 1, as well as specially imposed costs of procedure (art.



1802) and contributions according to article 60, accrue to the treasury of the federal State or of the union of communes (par. 1).

#### ARTICLE 60.

PARAGRAPH 1. In case of the assignment of duties connected with the miners' insurance, to a local insurance office according to article 37, paragraph 3, the miners' associations or miners' funds affected must pay an appropriate contribution toward the costs of the local insurance office.

PAR. 2. The superior insurance office determines the contributions; an appeal against the determination to the highest administrative authority is permissible.

### III. SUPERIOR INSURANCE OFFICES.

#### 1. Establishment.

##### ARTICLE 61.

PARAGRAPH 1. According to the provisions of this law, the superior insurance offices take cognizance of the business of the imperial insurance as higher judicial, decision, and supervisory authorities.

PAR. 2. The State government may assign to them also other duties connected with the miners' insurance.

##### ARTICLE 62.

PARAGRAPH 1. The superior insurance office is as a rule established for the district of a higher administrative authority.

PAR. 2. The highest administrative authority may delimit the district differently.

PAR. 3. The State governments of several federal States may establish for their territories or parts thereof a joint superior insurance office.

##### ARTICLE 63.

PARAGRAPH 1. The highest administrative authority may also establish superior insurance officers for—

1. The administration of establishments and service establishments of the Empire or of the federal States which have their own establishment sick funds;
2. Groups of establishments, for whose employés special institutes (*Sonderanstalten*) provide the invalidity and survivors' insurance;
3. Groups of establishments belonging to miners' associations or miners' sick funds.

PAR. 2. For these special superior insurance offices article 62, paragraph 1, and articles 72, 73, and 80 are not applicable. In other respects the provisions relating to superior insurance offices are applicable to them as far as articles 70, 75, and 81 do not prescribe otherwise.

PAR. 3. The highest administrative authority specifies their competence.

##### ARTICLE 64.

The highest administrative authority may attach the superior insurance offices to superior imperial or State authorities, or may establish them as independent State authorities.

##### ARTICLE 65.

PARAGRAPH 1. The highest administrative authority specifies the seat of the superior insurance office.

PAR. 2. For a joint superior insurance office the approval of the State governments affected is required.

## ARTICLE 66.

The highest administrative authority communicates to the Imperial Insurance Office for publication the seat and district of all superior insurance offices of their territory within one month from their establishment or change.

## ARTICLE 67.

If a superior insurance office is attached to a superior imperial or State authority, the director of the latter is at the same time the president of both. A director of the superior insurance office is appointed as his permanent substitute.

2. *Composition.*

## ARTICLE 68.

The superior insurance office is composed of members and of associates.

## ARTICLE 69.

PARAGRAPH 1. The superior insurance office shall appoint, at the same time, in addition to the director at least one member as his substitute.

PAR. 2. At least one substitute shall be appointed for each member.

PAR. 3. The members shall be appointed to the principal position or for the term of the principal position from the number of public officials, the director either for life or according to State law, without recall.

## ARTICLE 70.

The highest administrative authorities may specify that other official duties shall be assigned to the director, and that the other members, as well as in the case of special superior insurance offices the director, exercise their office as a subsidiary occupation.

## ARTICLE 71.

PARAGRAPH 1. The associates shall be elected one-half from the employers and one-half from the insured persons.

PAR. 2. The number of associates is 40; it may be increased or decreased by the highest administrative authority.

PAR. 3. An associate may not at the same time be a nonpermanent member of the Imperial Insurance Office or of a State insurance office.

## ARTICLE 72.

PARAGRAPH 1. The industrial accident associations, the navigation accident association, and the executive authorities specify for each superior insurance office an accident association or executive authority to represent their right to vote (art. 73, par. 1). If there is no agreement, the Imperial Insurance Office shall specify the particulars.

PAR. 2. The names of these representative associations and representative executive authorities are to be communicated to the Imperial Insurance Office and to be published by it.

## ARTICLE 73.

PARAGRAPH 1. The associates from the employers shall be elected one-half by the employer members in the committee of the competent insurance institute and one-half by the directorates of the competent agricultural associations and of the representative accident association; if representative executive authorities have been specified, they shall vote in place of the directorate of the representative association. The Imperial Insurance Office decrees the election regulations.

PAR. 2. The associates from the insured persons are elected by the representatives of the insured persons of the local insurance offices of the district of the superior insurance office according to the principle of proportional representation. The number of votes of the rep-

representatives of the insured persons is determined by the superior insurance office according to the number of sick-fund members of the district of their local insurance office (art. 43). The highest administrative authority decrees the election regulations.

#### ARTICLE 74.

PARAGRAPH 1. The voting is done by written ballot. The director of the superior insurance office conducts the election.

PAR. 2. Election disputes are decided finally by the superior insurance office (decision chamber).

#### ARTICLE 75.

PARAGRAPH 1. The employer associates for a special superior insurance office are elected by the employer members of the directorate either of the establishment sick fund, or of the special institute, or of the miners' associations or miners' funds; if there are no representatives of the employers in a directorate, the voting is done by the representatives of employers who belong to another administrative body.

PAR. 2. The associates from the insured persons are elected according to the principles of proportional representation by the committee members of insured persons, either of the establishment sick fund or the special institute, or by the elders of the miners' fund; as far as miners' associations or miners' funds are admitted as special institutes or belong to a special institute, the voting is also done by the elders of the miners' funds; if a special institute has no committee, the voting is done by the representatives of the insured who belong to another administrative body.

PAR. 3. The highest administrative authority specifies the particulars.

#### ARTICLE 76.

Articles 46 to 48, article 49, paragraphs 2 and 3, and articles 50 to 54 are correspondingly applicable for the election, rights, and duties of associates and their substitutes. Appeals (art. 51, par. 3, art. 52, par. 2, and art. 53, par. 3) are to be directed to the highest administrative authority; fines (art. 51, par. 1, and art. 53, par. 2) may be imposed not to exceed 300 marks [\$71.40].

### 3. Chambers (*Kammern*).

#### ARTICLE 77.

PARAGRAPH 1. Each superior insurance office creates one or more judgment chambers (*Spruchkammern*) for matters assigned by this law to judgment procedure (*Spruchverfahren*).

PAR. 2. The judgment chamber is composed of a member of the superior office, as president, and of two associates of the employers and of two of the insured persons.

#### ARTICLE 78.

PARAGRAPH 1. Each superior insurance office creates one or more decision chambers (*Beschlusskammern*) for matters which this law assigns to the decision procedure (*Beschlussverfahren*).

PAR. 2. The decision chamber is composed of the president of the superior insurance office, of a second member, and of two associates. Of these, the associates of the employers and of the insured persons elect one each, and also at least one substitute each, from their midst, and the election shall be according to a simple majority of votes, for a term of four years.

PAR. 3. In case of a tie, the president casts the deciding vote.

4. *Supervision—Costs.*

## ARTICLE 79.

PARAGRAPH 1. The highest administrative authority exercises the supervision over the superior insurance office.

PAR. 2. They assign to it the necessary employés and provide its business rooms.

PAR. 3. The bureau, clerical, and subordinate employes have the rights and duties of imperial or State officials, except when employed as substitutes, or temporarily, or in preparatory work, the State government determines the particulars herewith.

PAR. 4. The president obligates them to the conscientious discharge of their official duties, so far as they are not already obligated by an oath of office.

## ARTICLE 80.

PARAGRAPH 1. The federal State defrays all costs of the superior insurance office.

PAR. 2. The insurance carriers have to pay a lump sum for each case under adjudication in which they are concerned; if in a case costs are to be defrayed according to paragraph 4, the lump sum is correspondingly reduced.

PAR. 3. The lump sums shall be determined by the Federal Council uniformly for the Empire for each branch of the workmen's insurance, and shall be revised every four years. They shall cover half of the costs of the superior insurance offices without the allowances of members and their substitutes and without the fees (art. 1803).

PAR. 4. The fees according to article 1803, the fines according to articles 76 and 1679, as well as the specially imposed costs of procedure (art. 1802), and the contributions according to article 82, accrue to the treasury of the federal State.

## ARTICLE 81.

PARAGRAPH 1. All costs of special superior insurance offices created for establishments of the Empire or of a State are to be defrayed by the administrations of the establishments. The receipts (art. 80, par. 4) accrue to the latter.

PAR. 2. All costs of the other special superior insurance offices are to be refunded after deduction of the receipts (art. 80, par. 4) by the insurance carriers participating to the federal State.

## ARTICLE 82.

If, according to article 61, paragraph 2, matters of the miners' insurance are assigned to a superior insurance office, then the miners' associations (*Knappschaftsvereine*) and miners' funds (*Knappschaftskassen*) affected to have to make appropriate contributions to its costs. The highest administrative authority determines the contributions.

## IV. IMPERIAL INSURANCE OFFICE—STATE INSURANCE OFFICES.

1. *Jurisdiction—Seat.*

## ARTICLE 83.

PARAGRAPH I. The Imperial Insurance Office, according to the provisions of this law, takes cognizance of the affairs of the imperial insurance as the highest authority on judicial, decision, and supervisory matters.

PAR. 2. It has its seat in Berlin.

## ARTICLE 84.

Its decisions are final as far as the law does not provide otherwise.

*2. Composition.*

## ARTICLE 85.

The Imperial Insurance Office is composed of permanent and nonpermanent members.

## ARTICLE 86.

PARAGRAPH 1. The Emperor appoints the president and the other permanent members for life on proposal of the Federal Council.

PAR. 2. From the permanent members the Emperor appoints the directors and the presidents of senates.

PAR. 3. The imperial chancellor appoints the other members.

## ARTICLE 87.

PARAGRAPH 1. The Imperial Insurance Office has 32 nonpermanent members. The Federal Council elects 8 of these, of which at least 6 must be from its membership; 12 are elected as representatives of the employers and 12 as representatives of the insured persons.

PAR. 2. According to need, substitutes shall be elected for the employers and the insured persons in the same manner. If members retire before the expiration of their term of office, the substitutes take their place in the order in which they were elected.

## ARTICLE 88.

PARAGRAPH 1. The employers and the insured persons are elected separately by written ballot under the direction of the Imperial Insurance Office, the insured persons according to the principles of proportional representation, the employers according to a simple majority of votes, in which a tie shall be decided by lot.

PAR. 2. The proportion of votes of each electing body is determined by the Federal Council according to the number of their insured persons. It may specify the manner of electing by districts.

PAR. 3. The Imperial Insurance Office publishes the result of the election.

## ARTICLE 89.

Of the 12 employers, 6 are elected by the employer members belonging to the committee of insurance institutes and of the corresponding representations of the special institutes, as follows:

- Four from the field of the industrial accident insurance;
- Two from that of the agricultural accident insurance.

## ARTICLE 90.

The other 6 employers shall be elected by the directorate of the accident association and by the executive authorities, and, furthermore, from the field of each of them, as follows:

- Four from the industrial associations and executive authorities, one of whom shall be from the navigation accident association;
- Two from the agricultural accident associations and executive authorities.

## ARTICLE 91.

The 12 insured persons shall be elected by the insured persons who are associates of the superior insurance offices, as follows:

- Eight from the field of the industrial and navigation accident insurance, of whom one shall be from the field of the navigation accident insurance;
- Four from the field of the agricultural accident insurance.

## ARTICLE 92.

Only men are eligible who are not excluded according to article 12.

## ARTICLE 93.

PARAGRAPH 1. The following are eligible as employers: The members of accident associations who are entitled to vote, their legal

representatives, the managers of their establishments with power of attorney, and the officials of establishments for which an executive authority has been appointed.

PAR. 2. Moreover, there are eligible, according to article 89, employers who are members of the committee of an insurance institute or of the corresponding representation of a special institute.

#### ARTICLE 94.

Eligible as insured persons are persons insured against accident according to this law; furthermore, insured persons who are members of the committee of an insurance institute, even if they are not insured against accident; and for the field of the navigation accident insurance, navigators of practical experience who are not ship-owners, managers of shipowning establishments, or authorized representatives thereof.

#### ARTICLE 95.

Article 49, paragraph 2, and articles 50 to 52, article 53, paragraphs 2 and 3, are correspondingly applicable; but the Imperial Insurance Office (decision senate), however, is competent for punishment (art. 51, par. 1, and art. 53, par. 2) and removal from office (art. 52). Fines (art. 51, par. 1, and art. 53, par. 2) may be imposed not to exceed 500 marks (\$119).

#### ARTICLE 96.

PARAGRAPH 1. The nonpermanent members receive a yearly allowance for their participation in the work and sessions of the Imperial Insurance Office, and, in so far as they reside outside of Berlin, refund of traveling expenses coming and returning, according to the rates in force for advisory councilors (*Vortragende Rate*) of the highest imperial authorities.

PAR. 2. Substitutes receive the same refund of traveling expenses and a per diem allowance of 18 marks (\$4.28).

#### ARTICLE 97.

The imperial chancellor obligates the nonpermanent members elected by the Federal Council, the president of the Imperial Insurance Office obligates the other members and their substitutes, before they enter on their duties, to the faithful discharge of their duties.

### 3. *Senates.*

#### ARTICLE 98.

PARAGRAPH 1. The Imperial Insurance Office forms judgment senates (*Spruchsenate*) for matters which this law assigns to judgment procedure.

PAR. 2. The judgment senate is composed of a president, a nonpermanent member elected by the Federal Council, a permanent member, two officials of the judiciary called in for this purpose, an employer, and an insured person. A permanent member may take the place of the member elected by the Federal Council.

#### ARTICLE 99.

PARAGRAPH 1. The president, a director, or a president of the senate presides in the judgment senate. The imperial chancellor may intrust another permanent member with the chairmanship.

PAR. 2. The imperial chancellor summons the officials of the judiciary to the judgment senate.

#### ARTICLE 100.

PARAGRAPH 1. The Imperial Insurance Office creates decision senates (*Beschlussenate*) for matters which this law assigns to the decision procedure.

PAR. 2. The decision senate consists of the president, or of one director, or of a senate president as presiding officer, and of the following: A nonpermanent member elected by the Federal Council, a permanent member, an employer, and an insured person. A permanent member may take the place of the member elected by the Federal Council.

#### ARTICLE 101.

PARAGRAPH 1. The Imperial Insurance Office creates the great senate (*Grosse Senat*) for the duties which this law assigns to that body.

PAR. 2. With reservation of enlargement according to article 1718, paragraph 2, the great senate consists of the president or his representative, two members elected by the Federal Council, two permanent members, two officials of the judiciary, two employers, and two insured persons.

#### ARTICLE 102.

PARAGRAPH 1. If all the members of the Imperial Insurance Office elected by the Federal Council are prevented from serving, permanent members shall be called in to take their place.

PAR. 2. The other members of the great senate and at least two substitutes for each shall be designated in advance for one fiscal year according to detailed provision of imperial decree (art. 35, par. 2). Of these there shall be designated two permanent members and two officials of the judiciary and their substitutes for each of the following subjects:

- Sickness insurance;
- Accident insurance;
- Invalidity, and survivors' insurance.

#### 4. Accounting bureau—Costs.

#### ARTICLE 103.

PARAGRAPH 1. An accounting bureau (*Rechnungstelle*) is to be established in the Imperial Insurance Office.

PAR. 2. It executes the work assigned to it by this law. It supports the Imperial Insurance Office in its accounting and technical insurance work. The Imperial Insurance Office specifies the nature of the information to be furnished to it for this purpose by the insurance carriers.

#### ARTICLE 104.

PARAGRAPH 1. The Empire bears the costs of the Imperial Insurance Office, inclusive of the costs of procedure.

PAR. 2. The fines according to articles 95 and 1698, paragraph 1, article 1701, paragraph 1, as also the specifically imposed costs of procedure (art. 1802), accrue to the imperial treasury.

#### 5. State insurance offices.

#### ARTICLE 105.

PARAGRAPH 1. A State insurance office which was established before this law, for the territory of a federal State, may remain in existence as long as there are under its jurisdiction at least four superior insurance offices.

PAR. 2. As far as this law so prescribes, the State insurance office takes the place of the Imperial Insurance Office for this territory.

PAR. 3. The costs of the State insurance office are borne by the federal State.

#### ARTICLE 106.

PARAGRAPH 1. The State insurance office consists of permanent and nonpermanent members.

PAR. 2. The State government appoints the permanent members. They are to be appointed either for life or according to the State law, without recall as far as their appointment is for the actual office.

PAR. 3. At least eight representatives of the employers and eight representatives of the insured persons shall be elected under the direction of the State insurance office, by written ballot, as non-permanent members. One-half of them shall come from the agricultural and the other half from the industrial accident insurance.

#### ARTICLE 107.

PARAGRAPH 1. Article 87, paragraph 2, and articles 88 to 97, are correspondingly applicable for the election, rights, and duties of the members, in so far as article 106, paragraph 3, or the following pages do not provide otherwise.

PAR. 2. The highest administrative authority takes the place of the Federal Council and of the imperial chancellor.

PAR. 3. The employers are elected by—

1. The employer members in the committees of the insurance institutes and in the corresponding representative bodies of special institutes, created for or embracing the territory of the federal State.
2. The directorates of the accident associations and the executive authorities embracing establishments with their seat in the territory of the federal State. Where this territory is identical with the district of one or more sections, the section directorates elect in place of the association directorates.

PAR. 4. The insured persons are elected by the insured persons who are associates of those superior insurance offices which are created for or embrace the territory of the federal State.

PAR. 5. The State government determines the proportion of votes according to the number of insured persons.

#### ARTICLE 108.

PARAGRAPH 1. The removal of a nonpermanent member is decided upon by the State insurance office.

PAR. 2. Articles 98 to 100, and 104, paragraph 2, are correspondingly applicable for the State insurance office; the highest administrative authority takes the place of the Federal Council and of the imperial chancellor; the treasury of the federal State takes the place of the imperial treasury.

#### ARTICLE 109.

PARAGRAPH 1. As far as this law does not regulate the business management and the procedure of the State insurance office, it is done by the State government.

PAR. 2. The State government specifies the allowances to non-permanent members.

### SECTION FOUR.—OTHER GENERAL PROVISIONS.

#### I. AUTHORITIES.

##### ARTICLE 110.

The highest administrative authority may transfer to other authorities some of the duties and rights assigned to them by this law.

##### ARTICLE 111.

PARAGRAPH 1. The highest administrative authorities specifies—

1. Which State authority and which authorities and representative bodies of unions of communes and of communes are competent for the duties which this law assigns to the superior and inferior administrative authorities, to the local police



authorities, to the communal authorities, to the unions of communes, and to the communes, as well as their authorities and representatives.

2. Which unions are to be considered as unions of communes; a single commune is only then considered a union of communes in the meaning of the law if so specified by the highest administrative authority.
3. Whether and which local business of the imperial insurance shall be transacted by communal authorities in place of the local insurance offices.

PAR. 2. The specifications shall be published in the Reichsanzeiger.

#### ARTICLE 112.

If at least half the members of the administrative bodies are composed of representatives of the insurance elected by secret ballot, the highest administrative authority may assign duties of the local insurance office to administrative bodies of—

Miners' associations or of miners' funds.

Establishment of sick funds for establishment administrations and service establishments of the Empire and of the federal States.

Special institutes of the Empire and federal States.

Judicial duties may not be transferred.

#### ARTICLE 113.

PARAGRAPH 1. If an insurance authority, an insurance carrier, or an establishment embraces territories of several federal States, the State government or the highest administrative authority of the federal State of its seat, takes cognizance of the powers which this law assigns to the State government or to the highest administrative authority as far as it is not otherwise prescribed.

PAR. 2. If the State governments or the highest administrative authorities do not agree, where this law prescribes their co-operation, the Federal Council decides between the State governments, and the imperial chancellor between the administrative authorities. The same is applicable if they do not agree as to their competency, or in case of paragraph 1, as to the seat.

PAR. 3. The imperial chancellor exercises the rights of the highest administrative authority for the establishments of the Empire and for their special insurance authorities and for insurance carriers.

#### ARTICLE 114.

The provision of this law are also applicable for the independent manors and marches (*ausmärkische Bezirke*). The lord of the manor or the march authorities (*Gemarkungsberechtigte*) exercise there the rights and duties in place of the communes.

### II. LEGAL ASSISTANCE.

#### ARTICLE 115.

PARAGRAPH 1. The public authorities are required to comply with all requests pertaining to the execution of this law coming to them from insurance and other public authorities and from administrative bodies of the insurance carriers, especially to execute all decisions which may be carried out.

PAR. 2. Supervisory transactions as described in article 347, paragraph 4, article 404, paragraph 3, and articles 888, 1465, and 1470, may be demanded only under the conditions named therein.

#### ARTICLE 116.

The administrative bodies of the insurance carriers have to give this legal assistance to each other as well as to the authorities and poor-law unions.

## ARTICLE 117.

Per diem allowances, traveling expenses, fees for witnesses and experts, and all other cash expenditures arising out of legal assistance, must be paid by the insurance carriers as their own administrative costs.

## III. BENEFITS.

## ARTICLE 118.

Benefits granted according to this law or to supplementary State laws, and relief given in their place through the transfer of the claims, are not public charities.

## ARTICLE 119.

PARAGRAPH 1. The claims of the persons entitled thereto may, with reservation of article 1325, only be legally transferred, assigned, or attached—

1. To cover an advance on his claims received by the person entitled to benefits either from the employer or from an administrative body of the insurance carrier or one of its members, before the allowance of the benefits.
2. To cover claims designated in article 850, paragraph 4, of the Code of Civil Procedure (*Zivilprozessordnung*).
3. To cover claims from communes, poor-law unions, and the employers and funds representing them, entitled to reimbursement according to article 1531; transfer, assignment, and attachment are only permissible up to the amount of legal claims for reimbursement.
4. To cover arrears of contributions which have been overdue not longer than three months.

PAR. 2. As an exceptional measure, the person entitled thereto may also transfer the claim in other cases, wholly or partly, to other persons, with the approval of the local insurance office.

## ARTICLE 120.

PARAGRAPH 1. To inebriates not under guardianship, benefits in kind may be granted wholly or partly. This must be done on demand of a poor law union affected or of the communal authority of the place of residence of the inebriate. In the case of inebriates under guardianship, the granting of the benefits in kind is only permissible with the approval of the guardian. On his demand it must be done.

PAR. 2. The commune where the claimant resides grants the benefits in kind. The claim to cash benefits is transferred to the commune up to the value of the payments in kind received. Benefits in kind may also be granted by placing him in a sanatorium for inebriates or with approval of the commune, through the intervention of an institution for inebriates.

PAR. 3. A balance of cash benefits is to be assigned to the husband or wife of the person entitled to compensation, his children or his parents, or, in case he has none, to the commune to be used for him.

## ARTICLE 121.

PARAGRAPH 1. The local insurance office (decision committee) decrees the order after a hearing of the communal authority and of the person entitled to benefits and communicates it in writing to them and to the insurance carrier. It decides in disputes between the communal authority and the person entitled to benefits.

PAR. 2. On appeal the superior insurance office decides finally.

PAR. 3. When the case relates to cash benefits of the accident or of the invalidity and survivors' insurance the insurance carrier notifies the Post Office Department if the claim to cash benefits has been finally transferred to the commune.

## IV. MEDICAL TREATMENT.

## ARTICLE 122.

PARAGRAPH 1. The medical treatment in the meaning of this law shall be given by registered physicians, and for dental diseases by registered dental surgeons (*approbierte Zahnärzte*) (art. 29 of the Industrial Code). It includes assistance of other persons as barber surgeons, midwives, medical helpers, medical attendants, nurses, masseurs, etc., as also dental assistants (*Zahntechniker*), but only in the case of an order by the physician (or dental surgeon) or in urgent cases, if no registered physician (or dental surgeon) is available.

PAR. 2. The highest administrative authority may specify how far otherwise assistants may give independent treatment within the limits of their powers as authorized by the State.

## ARTICLE 123.

In the case of dental diseases, but excluding diseases of the mouth or gums, treatment may be given with the approval of the insured person by dental assistants in addition to dental surgeons. The highest administrative authority specifies how far dental assistants may give otherwise independent treatment in case of such dental diseases. This authority may specify how far this may also be done by medical helpers and medical attendants. It specifies further who is to be considered a dental assistant in the meaning of this law.

## V. TIME LIMITS.

## ARTICLE 124.

PARAGRAPH 1. If the beginning of a time limit is determined by an event or point of time, the time limit begins with the day following the event or the point of time.

PAR. 2. If a time limit is extended, the new time limit begins with the expiration of the old one.

## ARTICLE 125.

PARAGRAPH 1. A time limit determined by days ends with the expiration of its last day, a time limit determined by weeks or months with the expiration of that day of the last week or the last month which corresponds according to name or number to the day on which the event or the point of time falls.

PAR. 2. In case the corresponding day is missing in the last month, the time limit ends with the month.

## ARTICLE 126.

In case it is not necessary for a period of months or years to be continuous, then the month will be reckoned as having 30 days and the year as having 365 days.

## ARTICLE 127.

PARAGRAPH 1. In case the day set for the statement of intention or for a payment or for the expiration of a time limit falls on a Sunday or a general holiday recognized by the State in the place of declaration or of payment, then the succeeding working day takes its place.

PAR. 2. This provision is not applicable for the duration of benefits to which an insurance carrier is bound.

## ARTICLE 128.

PARAGRAPH 1. So far as this law does not provide otherwise, legal measures are to be inaugurated within one month after delivery of the contested decision.

PAR. 2. For seamen sojourning outside of Europe this time limit is determined by the office which decreed the contested decision; it must be at least three months from the date of delivery.

#### ARTICLE 129.

PARAGRAPH 1. So far as this law does not provide otherwise, legal measures shall be inaugurated at the office which has to make the decision.

PAR. 2. The time limit is considered as observed when the legal measures have been received in time by another German authority or by an administrative body of the insurance carrier, or in case of the navigation accident insurance also by a German marine office (*Seemannsamt*) in a foreign country.

PAR. 3. The legal documents are to be delivered immediately to the competent authority.

#### ARTICLE 130.

Legal measures effect a stay only in cases where the law so provides.

#### ARTICLE 131.

PARAGRAPH 1. In case an interested person has been kept by natural events or by other unavoidable accidents from observing the legal time limit of procedure, he shall on application be granted reinstatement to his previous status.

PAR. 2. On application reinstatement will also be granted if the document received too late has been mailed at least three days before the expiration of the time limit.

#### ARTICLE 132.

PARAGRAPH 1. In the case of article 131, paragraph 1, application for reinstatement must be made within a period, the duration of which shall be determined by the duration of the period lapsed. The period begins with the day on which the preventing cause was removed.

PAR. 2. In cases of article 131, paragraph 2, application for reinstatement shall be made within one month. The period begins with the day on which the interested party learns that he has not observed the time limit.

PAR. 3. No application for reinstatement may be made after the expiration of two years from the end of the time limit.

#### ARTICLE 133.

PARAGRAPH 1. The application for reinstatement shall—

1. State the facts forming the basis for the reinstatement;
2. Indicate the means to make these facts evident;
3. Make good the lapsed transaction if it has not already been done.

PAR. 2. The application is made to the authority where the time limit has lapsed; article 129, paragraphs 2 and 3, are correspondingly applicable. The decision rests with the authority which decides upon the action which has later been made good.

#### ARTICLE 134.

PARAGRAPH 1. The procedure concerning the application shall be combined with that concerning the action made good later, but the application may first of all be discussed and decided alone.

PAR. 2. For the decision concerning the admissibility of the application and its contesting, the same provisions are applicable as for the action made good later.

## VI. NOTIFICATIONS.

## ARTICLE 135.

PARAGRAPH 1. Notifications which start a time limit may be made by registered letter.

PAR. 2. The postal receipt justifies after two years from its making out, the assumption that delivery has been made within the regular time limit after the mailing.

## ARTICLE 136.

PARAGRAPH 1. Persons not living in Germany must upon demand designate a person authorized to receive notifications.

PAR. 2. If the abode is unknown and a person authorized to receive notifications has not been designated within the time limit set, then an announcement in the business rooms of the authority or of the proper office may take the place of the notification; the time limit must not be less than one month.

## VII. FEES AND STAMP TAXES.

## ARTICLE 137.

All proceedings and documents necessary to the insurance carriers and insurance authorities to establish and transact the legal relations between the insurance carriers on the one hand and the employers or insured persons or their survivors on the other, are exempt from fees and stamp taxes, as far as this law does not provide otherwise.

## ARTICLE 138.

The same is applicable for proceedings out of court and documents of this kind, and for such nonofficial powers of attorney and official certificates which, according to this law, become necessary for identification and authentication.

## VIII. PROHIBITIONS AND PENALTIES.

## ARTICLE 139.

PARAGRAPH 1. Employers and their employees, as well as insurance carriers, are prohibited from restricting insured persons in the acceptance or discharge of an honorary office of the imperial insurance, or from injuring them on account of the acceptance or manner of discharge of such an honorary office. The employers and their employees are further prohibited from preventing either wholly or partly, either through agreements or working regulations, the application of the provisions of this law to the injury of the insured persons.

PAR. 2. Agreements conflicting herewith are void.

## ARTICLE 140.

Employers or their employees infringing article 139, paragraph 1, shall be punished by fines not to exceed 300 marks [\$71.40] or by imprisonment as far as they are not liable to more severe penalty in accordance with other legal provisions.

## ARTICLE 141.

PARAGRAPH 1. The persons named below, if they disclose without authority what they have learned while performing their official duty about diseases or other invalidity of insured persons, or the causes thereof, shall be punished by fines not to exceed 1,500 marks [\$357] or by imprisonment for not more than three months; prosecution shall be instituted only on application of the insured person or of the supervisory authority; these persons are—

A member of an administrative body or an employee of an insurance carrier;

A member or an employee of an insurance authority;

A representative or associate in an insurance authority.

**PAR. 2.** Other persons for whom this law provides a benefit from an insurance carrier are considered as insured persons.

**ARTICLE 142.**

**PARAGRAPH 1.** The following persons, if they disclose business or trade secrets which they have learned while performing their official duties, shall be punished with fines not to exceed 1,500 marks [\$357], or with confinement in jail:

Persons designated in article 141, paragraph 1;

Special experts according to article 880;

Members of committees for the decision of appeals made under article 1000, paragraph 2, and of protests made under article 1023, paragraph 1.

**PAR. 2.** If this is done to injure the undertaker, or to procure for themselves or other persons pecuniary advantages, they shall be punished by imprisonment. In addition to the prison sentence they may be punished with the loss of their civic rights and fines not to exceed 3,000 marks [\$714].

**PAR. 3.** Prosecution in the case mentioned in paragraph 1 shall be instituted only on application of the undertaker.

**ARTICLE 143.**

The persons designated in article 142, paragraph 1, shall be punished with imprisonment if they make use of business or trade secrets to the disadvantage of the undertaker or to procure for themselves or other persons a pecuniary advantage. In addition to imprisonment they may be sentenced to the loss of their civic rights and fined not to exceed 3,000 marks [\$714].

**ARTICLE 144.**

In cases mentioned in article 142, paragraph 2, or article 143, if there are mitigating circumstances, the punishment shall be a fine not to exceed 3,000 marks [\$714].

**ARTICLE 145.**

In the case of officials subject to the rules of service of a State or communal authority, the provisions applicable for them take the place of articles 141 to 144.

**ARTICLE 146.**

**PARAGRAPH 1.** With reservation of article 59, paragraph 3, article 80, paragraph 4, article 104, paragraph 2, article 108, paragraph 2, and articles 914, 1045, and 1224, fines accrue to the treasury of the insurance carrier; those imposed by a court only then when this law so provides.

**PAR. 2.** Fines, except such as are imposed by a court, shall be collected in the same manner as arrears.

**ARTICLE 147.**

Contraventions of this law for which the courts are not competent, expire by limitation in three months, if not punishable with a fine of more than 300 marks [\$71.40], otherwise in one year. The period of limitation begins with the day on which the act was committed. It is interrupted by any action directed against the violator by the bodies competent to impose a penalty. With the interruption begins a new period of limitation; it ends at the latest with the expiration of 10 years from the day on which the contravention took place.

**ARTICLE 148.**

Punishments imposed finally and not decreed by the courts expire by limitation in two years. The period of limitation begins with the day on which the decision became final. It is interrupted by any action directed to the exception of the punishment by the bodies

charged with the execution. With the interruption begins a new period of limitation; it ends at the latest with the expiration of four years from the day on which the decision became final.

#### IX. LOCAL WAGE RATE.

##### ARTICLE 149.

**PARAGRAPH 1.** As the local wage rate that rate shall be used which is the daily wage customarily paid in the locality to ordinary day laborers.

**PAR. 2.** The superior insurance office determines and publishes the local wage rate. The directorates of the insurance institutes affected shall be previously given a hearing; the local insurance office shall express an opinion after having given a hearing to the communal authorities and to the directorates of the sick funds affected.

##### ARTICLE 150.

**PARAGRAPH 1.** The local wage rate shall be determined separately for men and for women, for insured persons under 16 years, for those between 16 and 21 years, and for those over 21 years.

**PAR. 2.** The insured persons under 16 years (juveniles) may be classified as young persons of 14 years and over and children of less than 14 years; apprentices are considered as young persons.

**PAR. 3.** In other respects the local wage rate as determined uniformly according to the average for the whole district of each local insurance office. Exceptions are permissible when there are considerable differences in the amount of wages in different localities or between city and country.

##### ARTICLE 151.

**PARAGRAPH 1.** The local wages are determined at the same time for the whole Empire, at first until December 31, 1914, afterwards always for four years. Changes in the interim shall only be in force until the next general determination.

**PAR. 2.** All changes shall come into use only two months after their publication.

##### ARTICLE 152.

Before the beginning of each four-year term the imperial chancellor shall publish in the *Zentralblatt für das Deutsche Reich* a list of all determinations in force, and also at least annually a list of changes made in the meantime.

#### X. PLACE OF EMPLOYMENT.

##### ARTICLE 153.

**PARAGRAPH 1.** The place of employment is the place in which the employment actually takes place.

**PAR. 2.** For insured persons who are employed at a definite work place (establishment, place of service), this shall be considered also as the place of employment, while they are performing elsewhere pieces of work of short duration for the employer.

**PAR. 3.** The same is applicable to insured persons who are employed at various times from a definite place of work on single pieces of work in districts of various local or rural sick funds.

**PAR. 4.** It is further applicable to insured persons who are only employed on single pieces of work outside of the definite work place, if both the latter and their place of employment are situated in the district of the same local insurance office.

##### ARTICLE 154.

For employed persons for whom no definite work place is provided, the seat of the establishment is considered as the place of employment.

## ARTICLE 155.

For insured persons who have been engaged by the administration of an establishment for a varied employment to be carried on in different communes, that commune where the immediate management of the work has its seat is to be considered as the place of employment. After a hearing of the interested administrations and communes or unions of communes the superior insurance office can specify otherwise in this regard.

## ARTICLE 156.

For insured persons employed at an agricultural occupation, changeable in various communes, the seat of the establishment (arts. 963 and 964) is considered as the place of occupation.

## XI. LEGISLATION OF FOREIGN COUNTRIES.

## ARTICLE 157.

PARAGRAPH 1. So far as other countries have put into operation a system of relief corresponding to the imperial insurance, the imperial chancellor, with the approval of the Federal Council and with due regard to reciprocity, may make agreements as to what extent the relief shall be regulated according to the imperial insurance or the relief provisions of the other country for establishments overlapping from the territory of one country into that of another, as well as for insured persons temporarily occupied in the territory of the other country.

PAR. 2. Likewise if there is a reciprocal consideration, the insurance of citizens of a foreign country may be regulated otherwise than according to the provisions of this law, and the operation of the relief of the one country be facilitated in the territory of the other. In these agreements the obligation of the employers to pay contributions according to this law must not be reduced or done away with. The Reichstag must be notified of these agreements.

PAR. 3. These provisions are correspondingly applicable in the case of a relief which takes the place of the imperial insurance.

## ARTICLE 158.

With the approval of the Federal Council, the imperial chancellor can decree that a right to reimbursement may be exercised against subjects of a foreign State or their legal successors.

## XII. GENERAL DEFINITIONS.

1. *Employments subject to insurance.*

## ARTICLE 159.

With reservation of the provisions of articles 551, 928, and 1062, the employment of husband or wife by the other does not establish any insurance obligation.

2. *Earnings.*

## ARTICLE 160.

PARAGRAPH 1. In the meaning of this law, earnings consist not only of salaries or wages, but also of participation in profits receipts in kind, or other receipts which the insured person receives from the employer or a third party in place of salary or wages or in addition to them, even if it is only a matter of custom.

PAR. 2. The value of receipts in kind shall be reckoned according to local prices, which are to be determined by the local insurance office.



3. *Agriculture.*

## ARTICLE 161.

In so far as there are no different provisions, the provisions of this law relating to agricultural establishments, agricultural employers, agricultural undertakers, and agricultural employees, are also applicable to forestry establishments, forestry employers, forestry undertakers, and forestry employees.

4. *Persons engaged in home-working industries.*

## ARTICLE 162.

PARAGRAPH 1. In the meaning of this law, those independent workmen who manufacture or prepare industrial products in their own workrooms on the order and for the account of others are considered as persons engaged in home-working industries.

PAR. 2. They are also considered as such if they themselves procure the raw or auxiliary materials, as well as for the time during which they work temporarily for their own account.

5. *German seagoing vessels.*

## ARTICLE 163.

Every vessel sailing under the German flag, and used exclusively or preferably (*vorzugsweise*) for maritime navigation, is considered as a German seagoing vessel. Merely because natives of protectorates display the flag of the Empire (art. 10 of the protectorate law, Reichs-Gesetzblatt, 1900, p. 812), the ship does not become a German seagoing vessel in the meaning of this law.

6. *Fiscal year.*

## ARTICLE 164.

The fiscal year shall be the calendar year.

## BOOK TWO—SICKNESS INSURANCE.

## SECTION ONE—SCOPE OF THE INSURANCE.

## I. COMPULSORY INSURANCE.

## ARTICLE 165.

PARAGRAPH 1. The following are insured against sickness:

1. Workmen, helpers, journeymen, apprentices, and servants.
2. Establishment officials, foremen, and other employees in similar higher positions, if such employment is for all of them their principal occupation.
3. Clerks and apprentices in commercial establishments, and clerks and apprentices in pharmacies.
4. Members of the stage and of orchestras, without regard to the artistic value of their services.
5. Teachers and tutors.
6. Persons engaged in home-working industries.
7. The crews of German seagoing vessels, provided that they are subject neither to articles 59 to 62 of the Navigation Code (Reichs-Gesetzblatt, 1902, p. 175, and 1904, p. 167), nor to articles 553 to 553b of the Commercial Code; also the crews of vessels engaged in inland navigation.

PAR. 2. The prerequisite of insurance for all persons designated in paragraph 1, under Nos. 1 to 5 and No. 7, with the exception of all classes of apprentices, is that they shall be employed for compensation (art. 160), and that for those designated under Nos. 2 to 5 as well as for masters of vessels, that their regular annual earnings in the form of compensation do not exceed 2,500 marks [\$595].

## ARTICLE 166.

The special provisions of articles 416 to 494 are applicable to the insurance of persons employed in agriculture, as servants, of persons employed temporarily or in itinerant trades, of persons engaged in home industries and their home-working employees, as well as of all classes of apprentices employed without compensation.

## ARTICLE 167.

If when this law comes into force, other groups of employees are subject to insurance in a Federal State according to State laws, then the State government may decree that in case of sickness they are insured according to this law, and may determine the particulars thereof.

## ARTICLE 168.

The Federal Council determines how far temporary services are exempt from the insurance.

## ARTICLE 169.

PARAGRAPH 1. Exempt from the insurance are persons employed in the establishments or in the service of the Empire, of a Federal State, of a union of communes, of a commune, or of an insurance carrier, if there has been guaranteed to them from their employers a claim at least equal to the sick benefits in the amount and duration of the regular benefits of sick funds (art. 179), or for the same period, to salary, retirement pension, part pay or similar receipts equal to one and a half times the amount of the pecuniary sick benefits (art. 182).

PAR. 2. The same is applicable to teachers and tutors of public schools and institutions.

## ARTICLE 170.

PARAGRAPH 1. On application of the employer, persons employed in the establishments or in the service of other public unions or public corporations shall be exempted by the highest administrative authorities from the insurance obligation if they have been guaranteed one of the claims designated in article 169 from their employer, or if they are only being trained for their profession.

PAR. 2. The same is applicable for officials and employees of the court, domanial, cameralistic, forest, and similar administrations of the State sovereigns, of the ducal regency of Brunswick, and of the administration of the entailed estates of the princes of Hohenzollern.

## ARTICLE 171.

On application of the employer, the highest administrative authority may also specify how far persons employed in establishments or in the service of nonpublic corporations, or as teachers and tutors of nonpublic schools or institutions are exempt from the insurance, if there has been guaranteed to them from their employer one of the claims designated in article 169, or if they are being trained solely for their occupation.

## ARTICLE 172.

The following are exempt from the insurance:

1. Officials of the Empire, of the federal States, of the unions of communes, of the communes, and of the insurance carriers, and teachers and tutors in public schools or institutions, as long as they are being trained solely for their occupation;
2. Military persons who carry on during their service, or during their training for a civil employment, one of the occupations designated in article 165, to whom article 169 is to be applied;

3. Persons who are employed in teaching for compensation during their scientific training for their future occupation;
4. Members of ecclesiastical societies, deaconesses, sisters of schools and similar persons, if because of religious or ethical motives they are employed in nursing, education, or other activities of public benefit and do not receive as compensation more than free maintenance.

## ARTICLE 173.

Upon his application, a person able to work permanently only to a small extent shall be exempted from the insurance obligation so long as the poor-law union which is liable for relief at the time agrees thereto.

## ARTICLE 174.

On application of the employer, the following shall be exempted from the insurance obligation:

1. Apprentices of every kind, so long as they are employed in the establishment of their parents;
2. Persons temporarily employed during unemployment in workmen's colonies or similar benevolent institutions.

## ARTICLE 175.

PARAGRAPH 1. The directorate of the fund decides on the application for exemption (arts. 173, 174). The exemption becomes effective from the time of the receipt of the application.

PAR. 2. If the application is refused, the local insurance office on appeal decides finally.

## II. VOLUNTARY INSURANCE.

## ARTICLE 176.

PARAGRAPH 1. The following persons may join the insurance voluntarily if their total yearly income does not exceed 2,500 marks [\$595]:

1. Employees exempt from insurance of the kind designated in article 165, paragraph 1;
2. Members of the family of the employer, engaged in his establishment, without any specific employment relation and without compensation;
3. Industrial and other undertakers of establishments, who regularly employ either no one or at the most two persons subject to insurance.

PAR. 2. The Federal Council specifies how far, under similar assumption, persons exempted from insurance according to article 168 may join the insurance voluntarily.

PAR. 3. The constitution of the sick fund may make the right to join dependent on a certain age limit and on the presentation of a health certificate from a physician. The establishment of an age limit requires the approval of the superior insurance office.

## ARTICLE 177.

If when this law becomes effective there are other groups in a federal State which according to State law have the right to join the insurance voluntarily, then this right shall be regulated according to detailed specifications issued by the highest administrative authority.

## ARTICLE 178.

The right to voluntary insurance ceases in every case where the regular total yearly income exceeds 4,000 marks [\$952].

## SECTION TWO—BENEFITS OF THE INSURANCE.

## I. GENERAL PROVISIONS AS TO BENEFITS.

## ARTICLE 179.

PARAGRAPH 1. The benefits provided by the insurance consist of the benefits of the sick funds (art. 225) in the form of sickness benefits, maternity benefits, and funeral benefits, as prescribed in this book.

PAR. 2. These benefits are considered as the regular benefits of the sick funds, and also even when the constitution makes use of the provisions of articles 188 and 192.

PAR. 3. The additional benefits specified by the constitution are also objects of the insurance; they may be granted only so far as this book provides.

## ARTICLE 180.

PARAGRAPH 1. The cash benefits of the fund shall be computed according to a basic wage. As such basic wage the constitution shall specify the average daily compensation of those classes of insured persons for whom the fund has been established, but not to exceed 5 marks [\$1.19] per working day.

PAR. 2. The constitution may also determine the average daily compensation according to the various rates of wages of the insured persons by classes up to 6 marks [\$1.43].

PAR. 3. The determination requires the approval of the superior insurance office (decision chamber).

PAR. 4. In place of the average daily compensation the constitution may specify as the basic wage the actual earnings of the individually insured persons up to 6 marks [\$1.43] per working day.

PAR. 5. For persons who voluntarily join the insurance, for whom no basic wage can be ascertained according to the above, the constitution shall specify the same.

## ARTICLE 181.

PARAGRAPH 1. In the case of rural sick funds the constitution may specify the local wage rate as the basic wage.

PAR. 2. But for establishment officials, foremen, and other persons in similar higher positions, and also for artisans, the basic wage shall be determined according to article 180. In districts without general local sick funds the same is applicable to the insured persons who according to the nature of their employment should belong to such a fund.

PAR. 3. In districts without a rural sick fund the constitution of the general local sick fund may specify the local wage rate as the basic wage for the insured persons who according to the nature of their employment should belong to a rural sick fund; in this connection paragraph 2, sentence 1, is correspondingly applicable. The superior insurance office can order the insertion of such a provision.

PAR. 4. In the case of insured persons whose basic wage in accordance with the above is specified otherwise than as the regular basic wage of the sick fund, the fund must keep a separate account for their contributions and benefits in so far as the highest administrative authority does not provide otherwise.

## II. SICKNESS BENEFITS.

## ARTICLE 182.

As sickness benefits (*Krankenhilfe*) shall be granted the following:

1. Sickness care (*Krankenpflege*) from the beginning of the sickness on; it includes medical attendance, and supply of

medicines, eyeglasses, trusses, and other minor therapeutic appliances;

2. Pecuniary sick benefit (*Krankengeld*) in the amount of half the basic wage for each working day, if the sickness incapacitates the insured person for work; it is granted beginning with the fourth day of sickness, but if the disability begins later, then from the day of its beginning.

#### ARTICLE 183.

PARAGRAPH 1. The sick benefits terminate at the latest with the expiration of the twenty-sixth week from the beginning of the sickness, but if the pecuniary benefit has been received beginning with a later date, then from this later date. If there was a period during the receipt of pecuniary benefit in which only medical care was granted, then for not more than 13 weeks this period shall not be included for the duration of the receipt of pecuniary benefit.

PAR. 2. If the pecuniary benefit has to be paid after the twenty-sixth week from the beginning of the sickness, then with its receipt the claim to medical care terminates.

#### ARTICLE 184.

PARAGRAPH 1. In place of medical care, the sick fund may grant treatment and maintenance in a hospital (hospital treatment—*Krankenhauspflege*). This requires the consent of the patient if he has a household of his own, or if he is a member of the household of his family.

PAR. 2. In the case of a minor over 16 years of age, his consent is sufficient.

PAR. 3. His consent is not required if—

1. The nature of the sickness demands a treatment or care which is not possible in the family of the patient;
2. The sickness is infectious;
3. The patient has repeatedly acted contrary to the sickness regulations (art. 347) or to the orders of the attending physician;
4. His condition or his conduct make continuous observation necessary.

PAR. 4. In the cases mentioned in paragraph 3, Nos. 1, 2, and 4, the sick funds shall, if possible, grant hospital treatment.

PAR. 5. Whenever several suitable hospitals are available which are willing to undertake the hospital treatment on the same conditions, the sick fund shall, under reservation of article 371, leave the choice to the beneficiary.

#### ARTICLE 185.

PARAGRAPH 1. With the consent of the insured person, the sick fund may grant care and attendance by nurses, nursing sisters, or other attendants, particularly in the cases where the admission of the patient to a hospital seems necessary, but can not be effected, or when there is an important reason for leaving the patient in his household or with his family.

PAR. 2. For this purpose the constitution may permit a deduction up to one-fourth of the pecuniary benefit.

#### ARTICLE 186.

Whenever hospital care has been granted to an insured person who has supported dependents either wholly or principally from his earnings, there shall in addition be paid to the dependents house money (*Hausgeld*) equal to one-half of the amount of the pecuniary sick benefit. The house money may be paid directly to the dependents.

## ARTICLE 187.

The constitution may—

1. Extend the duration of the sick benefits up to one year;
2. Grant care for convalescents up to the duration of one year after the expiration of the sick benefits;
3. Permit the granting of such appliances to prevent disfigurement or deformity, which after the completion of the medical treatment become necessary in order to restore or maintain the ability to work.

## ARTICLE 188.

If insured persons have already received the pecuniary sick benefit or the benefits substituted therefor for 26 weeks successively or collectively within 12 months, either on the basis of the imperial insurance or from a miners' sick fund or a substitute fund, then the constitution may limit the sick benefits to the regular benefits and to a total duration of 13 weeks in a new case which occurs during the next 12 months. This is only applicable where the sick benefits are demanded on account of the same cause of sickness which has not been removed.

## ARTICLE 189.

PARAGRAPH 1. Where an insured person draws a pecuniary sick benefit at the same time from another insurance, the sick fund has to reduce its benefit to such an extent that the total pecuniary sick benefit of the member does not exceed the average amount of his daily earnings.

PAR. 2. The constitution may refrain from making the reduction either as to all of it or part of it.

## ARTICLE 190.

When they make claim to the pecuniary sick benefit or its equivalent, the constitution may require the members to communicate to the directorate the amount of the benefits which they are receiving at the same time from another sickness insurance. The question as to which sickness insurance provides the benefits is not permissible.

## ARTICLE 191.

PARAGRAPH 1. The constitution may increase the pecuniary sick benefit up to three-fourths of the basic wage and grant it generally for Sundays and holidays.

PAR. 2. The constitution may grant the pecuniary sick benefit from the first day of the disability in cases of sickness either lasting longer than one week, or resulting in death, or caused by industrial accidents, or with approval of the superior insurance office, also in other cases of sickness.

## ARTICLE 192.

The constitution may refuse the pecuniary sick benefit to members either wholly or partly if—

1. They have injured the sick fund by an act punishable by loss of civic rights, for the duration of one year after the act;
2. The sickness has been caused intentionally or by culpable participation in brawls or disorderly conduct, for the duration of such sickness.

## ARTICLE 193.

PARAGRAPH 1. With the approval of the superior insurance office, the constitution may establish a maximum amount for minor therapeutic appliances, and also specify that the fund may grant an

additional allowance up to this amount for major therapeutic appliances.

PAR. 2. It may grant for the care of patients still other means besides minor therapeutic appliances, particularly special diet for sickness.

PAR. 3. In the case of insured persons who voluntarily remain members of a sick fund (art. 313) the constitution may grant them in the place of the sick care an amount equal to at least one-half of the pecuniary sick benefit, if they are not residing in the district of the sick fund or of the local insurance office.

#### ARTICLE 194.

The constitution may—

1. Increase the house money up to the amount of the legal pecuniary sick benefit;
2. Grant to insured persons, for whom no house money is to be paid, a pecuniary sick benefit up to one-half of its legal amount in addition to hospital treatment.

### III. MATERNITY BENEFITS.

#### ARTICLE 195.

PARAGRAPH 1. Women lying-in who in the preceding year before their confinement have been insured against sickness at least six months on the basis of the imperial insurance or in a miners' sick fund shall receive a maternity benefit in the amount of the pecuniary sick benefit for eight weeks, six of which must fall in the period after confinement.

PAR. 2. In the case of members of rural sick funds who are not subject to the Industrial Code the constitution must specify that the duration of the receipt of maternity benefits shall be at least four weeks, but not more than eight weeks.

PAR. 3. The pecuniary sick benefit shall not be granted in addition to the maternity benefit. The weeks after the confinement must be consecutive.

#### ARTICLE 196.

PARAGRAPH 1. With the consent of the women lying-in, the sick fund may—

1. Grant in place of the maternity benefit, medical treatment and maintenance in a lying-in home;
2. Grant treatment and attendance by home nurses and deduct for it not more than one-half of the maternity benefit.

PAR. 2. Article 186 is correspondingly applicable in the case of number 1.

#### ARTICLE 197.

If a woman lying-in has been insured during the last year in several sick funds, miners' sick funds, or substitute funds, then on demand the amount of the maternity benefit shall be repaid by the other funds to the sick fund liable for the benefits, according to articles 195 and 196, in proportion to the duration of her membership.

#### ARTICLE 198.

The constitution may grant either to married women subject to insurance or to all females subject to insurance under the requisites mentioned in article 195, paragraph 1, the services of a midwife and the services of an obstetrician if such become necessary at the confinement.

#### ARTICLE 199.

In the case of pregnant women who have belonged at least six months to the sick fund, the constitution may—

1. Grant them a pregnancy benefit in the amount of the pecuniary sick benefit for a total duration of not more than six weeks, if they become incapacitated for work on account of their pregnancy;
2. Include in the duration of this benefit the time of the granting of a maternity benefit before confinement;
3. Grant the services of a midwife and medical treatment if such become necessary for ailments incidental to pregnancy.

## ARTICLE 200.

The constitution may grant to women lying-in of the class designated in article 195, paragraph 1, a nursing benefit up to the amount of one-half of the pecuniary sick benefit and up to the expiration of the twelfth week after the confinement, so long as they themselves nurse their newborn children.

## IV. FUNERAL BENEFITS.

## ARTICLE 201.

As a funeral benefit, there shall be paid at the death of an insured person twenty times the amount of the basic wage.

## ARTICLE 202.

If, while a member of a sick fund, a sick person dies from the same sickness within one year after the expiration of the sick benefits, the funeral benefit shall be paid: *Provided*, That he has been incapacitated for work up to his death.

## ARTICLE 203.

From the funeral benefit are first defrayed the costs of burial, and they shall be paid to the person who has taken care of the burial. In case there is a surplus, then in the following order—the husband or wife, the children, the father, the mother, and the brothers and sisters are successively entitled to receive it, provided that they were living in the same household with the deceased at the time of his death. In the absence of such persons the surplus reverts to the sick fund.

## ARTICLE 204.

The constitution may increase the funeral benefit up to forty times the amount of the basic wage; it may also establish the minimum amount at 50 marks [\$11.90].

## V. BENEFITS TO THE FAMILY.

## ARTICLE 205.

The constitution may grant—

1. Sickness care to members not subject to insurance, of the family of an insured person.
2. A maternity benefit to the wife not subject to insurance, of an insured person.
3. A funeral benefit on the death of a wife or husband or a child of an insured person. It may be fixed for the wife or husband at not more than two-thirds, for a child at not more than one-half of the funeral benefit of a member, and is to be reduced by the amount of any funeral benefit for which the deceased himself was insured according to law.

## VI. GENERAL PROVISIONS.

## ARTICLE 206.

For persons subject to the insurance the claim to the regular benefits begins with their membership (arts. 306 to 308).



## ARTICLE 207.

The constitution may specify that the claim of persons entitled to insurance who have voluntarily joined the sick fund shall begin only after a waiting term of not more than 6 weeks.

## ARTICLE 208.

It may specify that the claim to additional benefits of the fund shall begin only after a waiting term of not more than 6 months after their admittance. Such a provision shall not be applicable to members who, during the last 12 months have already had for at least 6 months a claim to the additional benefits of a sick fund or a miners' sick fund.

## ARTICLE 209.

PARAGRAPH 1. By separation from membership this waiting term can be interrupted for the duration of not more than 26 weeks.

PAR. 2. For members who leave in order to perform their compulsory service in the army or navy the above duration is increased by this period of service.

## ARTICLE 210.

With the exception of funeral benefits, the cash benefits shall be paid at the expiration of each week.

## ARTICLE 211.

In cases where the insurance has already begun the benefits may be increased but not reduced by amendments to the constitution; changes in the basic wage shall have no influence.

## ARTICLE 212.

PARAGRAPH 1. If an insured person who is receiving cash benefits goes over to another fund, the latter takes over the further payment of benefits according to its constitution. The period during which benefits have already been received shall be included in counting the duration of the benefits.

PAR. 2. The insured person shall receive additional benefits only if he has already acquired a claim to additional benefits in his former sick fund.

## ARTICLE 213.

If a sick fund has accepted the contributions for a person for 3 months without interruption and without objection, after application has been made in due form and not intentionally incorrect, and if it develops, after an insurance case occurs, that the person was not subject to insurance and was not entitled to insurance, then the sick fund must nevertheless grant him the benefits prescribed by the constitution.

## ARTICLE 214.

PARAGRAPH 1. Insured persons who leave the fund on account of lack of employment (*Erwerbslosigkeit*) and who in the preceding 12 months have been insured either not less than 26 weeks or for 6 weeks immediately previous to leaving the fund, shall retain their claim to the regular benefits of the sick fund: *Provided*, That the case of insurance occurs during unemployment and within 3 weeks after leaving the fund. On application the sick fund must certify to the beneficiary his claim for these benefits.

PAR. 2. A funeral benefit shall also be granted even after the expiration of the 3 weeks if the sick benefits have been paid up to the time of death.

PAR. 3. If the unemployed person remains in a foreign country and if the constitution does not provide otherwise the claim shall cease.

## ARTICLE 215.

PARAGRAPH 1. If the Federal Council specifies that persons not subject to insurance according to article 168 may join the insurance voluntarily, it may restrict the regular benefits either to medical care and to hospital treatment without house money, or to their substitutes (art. 185) without pecuniary sick benefit.

PAR. 2. For those persons who join the insurance voluntarily the constitution, with the approval of the superior insurance office, may restrict the sick-fund benefits either to the same extent or restrict them to the pecuniary sick benefit.

PAR. 3. For such insured persons the contributions shall be correspondingly reduced.

## ARTICLE 216.

PARAGRAPH 1. Sick benefits shall be suspended—

1. As long as the beneficiary is serving a prison term or is in jail pending trial or has been placed in a workhouse or reformatory; if the insured person has become incapacitated for work through sickness, and if he has supported wholly or partly his dependents by his earnings, then they shall be granted house money (art. 186).
2. For beneficiaries who, after the case of insurance has occurred, without approval of the directorate of the sick fund voluntarily go to a foreign country, for the length of their abode there without this consent; the Federal Council may suspend the stopping of the claim for certain border territories.
3. For foreign beneficiaries so long as they are expelled from the territory of the Empire on account of condemnation in a penal procedure. The same applies to foreign beneficiaries who have been expelled from the territory of a federal State because of condemnation in a penal procedure, so long as they do not stay in another federal State.

PAR. 2. If the beneficiary has dependents in Germany to whom the constitution allows family benefits then these benefits shall be granted.

## ARTICLE 217.

PARAGRAPH 1. When, after a case of insurance has occurred, an insured person relinquishes his abode in Germany, without a suspension of sick benefits, the sick fund may settle with him by the payment of a lump sum. This must correspond to the value of the cash benefits to which he would be entitled in Germany according to the probable duration of the sickness; in such case three-eighths of the basic wage shall be reckoned for medical care.

PAR. 2. In case of a dispute in regard to the settlement, the opinion of the physician agreed upon by the affected parties, otherwise of the official physician, is decisive.

## ARTICLE 218.

Articles 216 and 217 are correspondingly applicable to maternity benefits, as also in the case of article 205, Nos. 1 and 2, for the family members entitled to benefits.

## ARTICLE 219.

PARAGRAPH 1. Sick persons who reside outside of the district of their sick fund receive, on demand of their sick fund, the benefits to which they are entitled from the general local sick fund of their place of residence. If a special local sick fund or a rural sick fund for insured persons of their kind is in operation there, it must grant the benefits.

PAR. 2. The same is applicable to family members entitled to benefits, as also to unemployed persons who have left the insurance (art. 214).

## ARTICLE 220.

The same is applicable to an insured person who falls ill during a temporary sojourn outside of the district of his sick fund, as long as he can not return to his place of residence on account of his condition. An application from his fund is not necessary, but within one week after the case of insurance occurred the sick fund which grants the benefits must notify the sick fund of the insured person, and as far as possible must carry out the latter's wishes as regards the nature of the relief.

## ARTICLE 221.

If an insured person falls ill in a foreign country he receives from the employer the benefits to which he is entitled from his sick fund as long as his condition does not permit of his returning to Germany. The employer must notify the sick fund within one week of the occurrence of the case of insurance, and must carry out as far as possible its wishes as regards the nature of the relief. The sick fund may itself take over the relief.

## ARTICLE 222.

In the cases of articles 219 to 221 the sick fund of the insured person must refund the costs to the other sick fund or to the employer. In such case three-eighths of the basic wage shall be considered as reimbursement for the cost of the sick care.

## ARTICLE 223.

PARAGRAPH 1. Claims to sick benefits lapse within two years after the day of their origin.

PAR. 2. Deductions from the claims of the persons entitled to benefits may only be made for—

Reimbursement claims for amounts which the beneficiary has received in cases of article 1542, or from the imperial accident insurance, but which must be refunded to the sick fund.

Contributions overdue.

Advances paid.

Sick-fund benefits paid in error.

Costs of procedure which the beneficiary has to refund.

Fines imposed by the director of the sick fund.

PAR. 3. Only half the amount of pecuniary benefits may be deducted on account of claims.

## ARTICLE 224.

The local insurance office decides, by judgment procedure, in disputes between sick funds in regard to—

1. Claim for refund according to articles 197 and 222.
2. Refund of benefits granted in error.

## SECTION THREE—CARRIERS OF THE INSURANCE.

## I. KINDS OF SICK FUNDS.

## ARTICLE 225.

PARAGRAPH 1. Sick funds, according to this law, are—

The local sick funds (*Ortskrankenkassen*).

The rural sick funds (*Landkrankenkassen*).

The establishment sick funds (*Betriebskrankenkassen*).

The guild sick funds (*Innungskrankenkassen*).

PAR. 2. Members of miners' sick funds established under the provisions of State laws may not join these sick funds.

## 1264 WORKMEN'S COMPENSATION AND INSURANCE.

### II. GENERAL LOCAL SICK FUNDS AND RURAL SICK FUNDS.

#### ARTICLE 226.

PARAGRAPH 1. Local sick funds shall be established for local districts (general local sick funds) (*Allgemeine Ortskrankenkassen*); rural sick funds shall also be created for similar areas.

PAR. 2. The local and rural sick funds shall, as a rule, be established within the district of a local insurance office.

PAR. 3. The highest administrative authorities may decree and permit exceptions.

#### ARTICLE 227.

The State legislation may specify for the territory or for parts of the territory of the federal State that no rural sick funds may be established in addition to the general local sick funds.

#### ARTICLE 228.

No rural sick fund shall be established, in addition to the general local sick fund; where the rural sick fund would not have at least 250 compulsory members.

#### ARTICLE 229.

The establishment of a rural sick fund, in addition to a general local sick fund, may, with the approval of the superior insurance office, be done away with, where the local insurance office (decision chamber) deems it unnecessary after a hearing of the employers and persons subject to insurance affected.

#### ARTICLE 230.

The establishment of a general local sick fund, in addition to a rural sick fund, may, with the approval of the highest administrative authority, be done away with, where the local sick fund would not have at least 250 compulsory members.

#### ARTICLE 231.

PARAGRAPH 1. General local sick funds and rural sick funds shall be established by decision of the union of communes.

PAR. 2. Where it is permissible for the district of a local insurance office to create one as well as several general local or several rural sick funds, the unions of communes affected must come to an agreement thereon. If they can not agree, the superior insurance office decides and decrees the establishment of the funds.

#### ARTICLE 232.

Where a general local or a rural sick fund is not established in proper time, the superior insurance office decrees its establishment.

#### ARTICLE 233.

PARAGRAPH 1. The communes and unions of communes affected have the right to appeal to the highest administrative authority against the decree of the superior insurance office.

PAR. 2. If the final decree is not carried out within the time limit, the superior insurance office establishes the sick fund or authorizes the local insurance office to do so.

#### ARTICLE 234.

Persons subject to insurance who do not belong to a miners' sick fund or to a special local or establishment or guild sick fund shall be members of the general local or rural sick fund of their class of occupation and of their place of employment.

#### ARTICLE 235.

PARAGRAPH 1. Members of the rural sick funds are—

Persons employed in agriculture.  
Servants.

Persons employed in itinerant trades.

Persons engaged in home-working industries and their home-working employees.

PAR. 2. Persons employed in horticulture, in cemetery establishments, in the care of parks and gardens, are, with reservation of article 236, paragraph 1, and article 237, paragraph 1, members of rural sick funds only if they are employed in parts of agricultural establishments.

#### ARTICLE 236.

PARAGRAPH 1. The Federal Council may assign to the rural sick funds still other groups of insured persons who were not legally subject to insurance before this law came into force.

PAR. 2. For its territory or for parts thereof, the highest administrative authority may assign to the general local sick funds individual groups of persons required to be insured in the rural sick funds.

#### ARTICLE 237.

PARAGRAPH 1. If a district has no general local sick fund, the persons subject to insurance in local sick funds belong to the rural sick fund.

PAR. 2. If a district has no rural sick fund, the persons required to insure in the rural sick fund belong in the general local sick fund.

#### ARTICLE 238.

Persons entitled to insurance who desire to insure themselves voluntarily and who do not, according to articles 243, 244, 245, paragraph 4, and article 250, paragraph 2, become members of a special local or establishment or guild sick fund may, according to the class of their employment, join either the general local or the rural sick fund of their place of employment.

### III. SPECIAL LOCAL SICK FUNDS.

#### ARTICLE 239.

PARAGRAPH 1. Where at the coming in force of this law there is in existence a local sick fund for one or for several branches of industry or kinds of establishments or for insured persons of one sex only, such fund shall be authorized as a special local sick fund, in addition to the general local sick fund, as long as it complies with the requirements of articles 240 to 242.

PAR. 2. It may retain the benefits allowed to be granted up to the present time, even though they are not of the same kind and are higher than those permitted by article 179, provided that such fund covers its expenses without exceeding the maximum legal contributions.

#### ARTICLE 240.

A special local sick fund shall be authorized only if—

1. It has at least 250 members (art. 241).
2. Its continuance does not endanger the existence or solvency of the general local, and the rural sick fund of the district (art. 242).
3. The benefits prescribed by its constitution are at least equal in value to those of the standard local sick fund, or are made equal within six months (art. 259 to 263).
4. Its solvency is permanently assured.
5. It does not extend beyond the district of the local insurance office.

## ARTICLE 241.

The minimum number of members shall be reckoned according to the average for the last three years, or if the sick fund has been in existence a shorter period, according to the average for this period.

## ARTICLE 242.

PARAGRAPH 1. The general local sick fund or the rural sick fund are especially considered as endangered if after the authorization of the special local sick fund the membership of the former funds would not reach at least 250.

PAR. 2. Until the membership of the general local sick fund or of the rural sick fund has reached this number, the sick funds with the smallest membership shall first be excluded.

## ARTICLE 243.

To the special local sick fund belong those groups of persons subject to insurance for which the sick fund exists according to its constitution; persons belonging to these groups and entitled to insure themselves voluntarily may join this fund. The constitution may not enlarge the scope of the membership.

## ARTICLE 244.

PARAGRAPH 1. If a special local sick fund is in existence for the industry branches and kinds of establishments in which the majority of the persons subject to insurance of an establishment is employed, all persons subject to insurance employed in the establishment shall belong to it, and likewise the persons entitled to insure themselves voluntarily can also join it; otherwise all of them shall belong to the general local sick fund.

PAR. 2. This does not affect membership in a special local sick fund operated for members of one sex only.

## IV. ESTABLISHMENT SICK FUNDS AND GUILD SICK FUNDS.

## ARTICLE 245.

PARAGRAPH 1. An employer may create an establishment sick fund for each establishment in which he employs permanently at least 150 persons subject to insurance and for each agricultural establishment or inland navigation establishment in which he employs permanently at least 50 persons subject to insurance. He may also create a common establishment sick fund for several establishments in which he employs permanently at least 150 persons altogether or in agricultural or inland navigation establishments at least 50 persons altogether who are subject to insurance. The persons affected who are subject to the insurance are first to be given a hearing.

PAR. 2. So far as an employer belongs with his establishment to a guild, which has a guild sick fund, he may not create an establishment sick fund for the employees subject to insurance who must belong to the guild sick fund.

PAR. 3. All persons employed in the establishment who are subject to insurance belong to the establishment sick fund. Article 181 is applicable where one of the establishments is an agricultural establishment.

PAR. 4. Persons entitled to insure themselves voluntarily, who are employed in the establishment, may join the sick fund as members.

## ARTICLE 246.

Administrations of the Empire and of the federal States have the same right (art. 245, par. 1) for their service establishments. Article 245, paragraphs 3 and 4, are applicable to the employees in these establishments.

## ARTICLE 247.

In establishments which on account of their nature annually reduce their force regularly or shut down temporarily (seasonal industries), the minimum number (art. 245, par. 1) must be on hand for at least two months.

## ARTICLE 248.

An establishment sick fund may only be created if—

1. It does not endanger the existence or solvency of existing general local sick funds or rural sick funds (art. 242); in this connection a sick fund is not considered as endangered if it still has more than 1,000 members after the creation of the establishment sick fund;
2. The benefits provided by its constitution are at least equal in value to those of the standard sick fund;
3. Its solvency is permanently assured.

## ARTICLE 249.

PARAGRAPH 1. Where a building owner employs temporarily a larger number of workmen in a temporary construction establishment he has to create an establishment sick fund on decree of the superior insurance office.

PAR. 2. With the approval of the superior insurance office the building owner may transfer this obligation to one or more employers, who have wholly or partly undertaken the construction on their own account, provided that sufficient surety is given.

PAR. 3. The provisions concerning a minimum membership as well as article 245, paragraph 2, article 248, are here not applicable; the superior insurance office determines the extent of the benefits.

PAR. 4. If the decree is not carried out within the term specified, the superior insurance office itself establishes the fund or charges the local insurance office with its establishment.

## ARTICLE 250.

PARAGRAPH 1. A guild may create a guild sick fund for the establishments of the members who belong to the guild.

PAR. 2. The persons subject to insurance employed in the establishment belong to this sick fund, so far as they are not subject to insurance in rural sick funds according to articles 235 and 236. Persons employed in the establishments and entitled to insure themselves voluntarily can also join it.

PAR. 3. Employees of an establishment, with which an employer has voluntarily joined a compulsory guild or for which an establishment sick fund has been created according to article 249, do not belong to the guild sick fund.

PAR. 4. Where a member of a guild removes his industrial establishment outside of the district of the sick fund, the membership of his employees subject to insurance in the guild sick fund ceases to exist.

## ARTICLE 251.

PARAGRAPH 1. A guild sick fund may only be established if—

1. It does not endanger the existence or solvency of existing general local sick funds and rural sick funds (art. 242); in this connection a sick fund is not considered as endangered if it still has more than 1,000 members after the creation of the guild fund;
2. The benefits provided by its constitution are at least equal in value to those of the standard local sick fund;
3. Its solvency is permanently assured.

PAR. 2. The committee of journeymen, the communal authority of the locality where the guild has its seat, the chamber of hand-work, as well as the supervisory authority of the guild, shall be given a hearing previous to the establishment of the fund.

#### ARTICLE 252.

PARAGRAPH 1. The application for the approval of an establishment or guild sick fund shall be directed to the local insurance office.

PAR. 2. The local insurance office shall offer to the rural sick funds and general local sick funds affected an opportunity to give their opinion and shall submit the application with an expression of its opinion to the superior insurance office.

#### ARTICLE 253.

PARAGRAPH 1. Establishment sick funds which have not been decreed according to article 249, as well as guild sick funds, may only be established with the approval of the superior insurance office.

PAR. 2. The superior insurance office (decision chamber) may only refuse the approval for establishment sick funds, with reservation of article 273, paragraph 1, No. 2, if the sick fund does not have the prescribed membership or if it does not meet the requirements of article 248.

#### ARTICLE 254.

The following are entitled to an appeal to the highest administrative authorities against the decision of the superior insurance office:

The employer or the guild if the approval is refused.

Each rural sick fund or general local sick fund affected, if the approval is granted.

The employer, if the creation of a sick fund has been decreed according to article 249.

#### ARTICLE 255.

PARAGRAPH 1. An establishment sick fund which existed before the coming into force of this law shall only be authorized if—

1. It has at least one hundred members, or in the case of sick funds for agricultural or inland navigation establishments at least fifty members (arts. 241 and 247);
2. The benefits provided by its constitution are at least equivalent to those of the standard sick fund or are made so within six months;
3. Its solvency is permanently assured.

PAR. 2. Where a common establishment sick fund existed for establishments of several employers it may be authorized under the same conditions.

PAR. 3. These requirements are not applicable to establishment sick funds which are authorized for establishments of the Empire or federal States.

#### ARTICLE 256.

PARAGRAPH 1. A guild sick fund which existed before the coming into force of this law shall be authorized, if it complies with the requirements of article 255, paragraph 1, Nos. 2 and 3.

PAR. 2. Where a common guild sick fund existed for several guilds it may be authorized under the same conditions.

#### ARTICLE 257.

An authorized establishment sick fund, or guild sick fund, may retain other and higher benefits permissible up to the present time than those permitted by article 179, if the fund covers its expenses without exceeding the maximum legal contributions.



## V. CONTROVERSIES.

## ARTICLE 258.

PARAGRAPH 1. In disputes arising between sick funds, as to which of them the establishments or parts of establishments belong, the local insurance office (decision committee) decides. On appeal the superior insurance office decides finally.

PAR. 2. The same is applicable if the sick funds affected refuse to anyone the right of membership in the sick funds.

PAR. 3. Where the decision assigns establishments or parts of establishments to another sick fund, it shall also determine when the new insurance status comes in force.

PAR. 4. Final decisions concerning the right of membership in sick funds are binding for all authorities and courts.

## VI. BENEFITS OF EQUAL VALUE.

## ARTICLE 259.

PARAGRAPH 1. The competent local insurance office (decision committee) decides whether sick fund benefits are of equal value with other benefits.

PAR. 2. Estimates of the total value of the benefits shall be made in this connection with due consideration of the special kind of membership of the individual sick funds.

PAR. 3. The Federal Council may determine particulars in this connection.

## ARTICLE 260.

Benefits of the standard sick fund which have not been in force a full year shall not be considered; nor shall additional benefits be considered which are only possible at the expense of the reserve, or by an increase of the contributions to more than  $4\frac{1}{2}$  per cent. of the basic wage.

## ARTICLE 261.

PARAGRAPH 1. The general local sick fund of the district shall be the standard sick fund.

PAR. 2. In the case of a sick fund whose district embraces those of several general local sick funds, the general local sick fund of its seat shall be the standard sick fund. A sick fund also grants benefits of equal value if it has special groups of members and maintains for each group benefits whose value is equal to those of the competent general local sick fund.

PAR. 3. In the case of agricultural establishment sick funds the rural sick fund, or where none has been established, the general local sick fund shall be the standard sick fund.

## ARTICLE 262.

PARAGRAPH 1. Whether the benefits are of equal value shall be determined every four years if facts are submitted which make it evident that the former determination is no longer correct.

PAR. 2. In the case of a newly established sick fund the local insurance office can take as a basis the benefits last determined of the standard sick fund.

## ARTICLE 263.

PARAGRAPH 1. The local insurance office communicates its decision to the sick funds affected, and as far as it concerns the creation of an establishment or of a guild sick fund, also to the rural sick funds and general local sick funds affected.

PAR. 2. The sick funds have the right of appeal to the superior insurance office. This decides finally. In special cases it may request the opinion of the accounting bureau of the Imperial Insurance Office before making a decision.

## VII. COMBINATION, SEPARATION, DISSOLUTION, AND CLOSING.

1. *Local and rural sick funds.*

## ARTICLE 264.

PARAGRAPH 1. A rural sick fund established for the whole district of the local insurance office shall be combined with the general local sick fund of the district if its membership falls below 250 and does so not merely temporarily.

PAR. 2. This may be done when the local insurance office (decision committee) after a hearing of the employers and persons subject to insurance affected deems its continuance unnecessary.

PAR. 3. A general local sick fund established for the whole district of the local insurance office shall be combined with the rural sick fund of the district if its membership falls below 250 and does so not merely temporarily.

## ARTICLE 265.

PARAGRAPH 1. If for the district of a local insurance office there have been established according to article 231, paragraph 2, several general local sick funds, they may be combined on decision of its committees and with the approval of the communes and unions affected.

PAR. 2. In the same manner several rural sick funds established according to article 231, paragraph 2 may be combined.

## ARTICLE 266.

A general local or a rural sick fund shall be closed if it becomes evident that it should not have been established.

## ARTICLE 267.

A general local or a rural sick fund, created for parts of the district of a local insurance office, shall be closed if—

1. Its membership falls below 250 and does so not merely temporarily and no combination according to article 265 is effected.
2. Its contributions, although they have amounted to 6 per cent. of the basic wage (arts. 389 and 390), inclusive of other revenues, are not sufficient to cover the regular benefits, and in case of a local sick fund if the employer and the insured persons can not agree on an increase of the contributions, or in case of a rural sick fund if the union of communes does not furnish the requisite funds.

## ARTICLE 268.

Where the district of a special local sick fund does not overlap that of the general local sick fund, the committees of both sick funds may decide to make the consolidation.

## ARTICLE 269.

PARAGRAPH 1. A special local sick fund may be dissolved on the decision of its committee.

PAR. 2. It shall be closed if—

1. It does not comply with the requirements of articles 240 to 242.
2. It becomes unable to pay its benefits according to article 267, No. 2.
3. It becomes evident that it should not have been authorized.

2. *Establishment and guild sick funds.*

## ARTICLE 270.

Several establishment sick funds for establishments of the same employer may on decision of their committees be combined into one fund.

## ARTICLE 271.

In the case of a change in the organization of a public administration which has created establishment sick funds for its establishments or services the superior insurance office, or if several superior insurance offices are affected, the highest administrative authorities, on application and after a hearing of the administrative bodies of the sick funds, shall fix the districts of the sick funds in a different manner.

## ARTICLE 272.

An establishment sick fund may be dissolved on application of the employer and with the approval of the sick fund committee.

## ARTICLE 273.

PARAGRAPH 1. An establishment sick fund shall be closed if—

1. The establishment for which it was created ceases to exist.
2. The employer does not provide for orderly handling of the funds and the accounts; the creation of a new establishment sick fund can be refused to him.
3. It becomes evident that it should not have been established or authorized.

PAR. 2. If in the case of No. 2 above, an establishment sick fund created by decree (art. 249) is concerned, the local insurance office may engage at the expense of the employer a representative for the management of the business of the fund.

## ARTICLE 274.

An establishment sick fund not established by decree (art. 249) shall be closed if—

1. Its membership falls below the minimum number and this decrease is not merely temporary (art. 245, par. 1, and art. 255, par. 1, No. 1).
2. The employer with the establishment becomes a member of a voluntary guild or a compulsory member of a compulsory guild which has a guild sick fund.
3. Its benefits are not equivalent to those of the standard sick fund and can not be made so within six months.
4. Its solvency is no longer permanently assured.

## ARTICLE 275.

An establishment sick fund created by decree according to article 249 may be closed by the superior insurance office.

## ARTICLE 276.

Guild sick funds shall be combined whenever their guilds are combined.

## ARTICLE 277.

PARAGRAPH 1. If a compulsory guild is created, and in consequence a guild is closed, the rights and obligations which it had relative to its guild sick fund shall be transferred to the compulsory guild.

PAR. 2. The fund shall be closed if the compulsory guild includes another district or other industry branches.

## ARTICLE 278.

A guild sick fund may be dissolved on decision of the guild meeting after a hearing of the journeymen's committee and with the approval of the sick fund committee.

## ARTICLE 279.

A guild sick fund shall be closed if—

1. The guild which established it goes into liquidation or is closed, with reservation of article 277, paragraph 1.

2. Its benefits are not equivalent to those of the standard local sick fund and can not be made so within six months.
3. Its solvency is no longer permanently assured.
4. Orderly handling of cash funds and accounts is not provided.
5. It becomes evident that it should not have been established or authorized.

### 3. Procedure.

#### ARTICLE 280.

The superior insurance office (decision chamber) in whose district the sick funds have their seat decides on the consolidation, dissolution, and closure of sick funds as well as on the question of separating from such funds. Where the seats of the sick funds affected are located in districts of different superior insurance offices, the highest administrative authority determines the competent superior insurance office.

#### ARTICLE 281.

The application for consolidation, separation, or dissolution is to be directed to that local insurance office which is competent for the sick funds affected. If their seats are located in districts of different local insurance offices, the superior insurance office determines the competent local insurance office.

#### ARTICLE 282.

PARAGRAPH 1. Any sick fund affected may make this application; in the case of local or rural sick funds, the competent union of communes can also do so; in the case of establishment sick funds the employer may also do so, and in the case of guild sick funds, the guild likewise.

PAR. 2. If this is not done in due time in cases of article 264, paragraph 1, or of article 276, the local insurance office makes the application on its own initiative.

PAR. 3. If a sick fund must be closed, the local insurance office starts the procedure on its own initiative. In the case of establishment sick funds created by decree it has the right to do so (art. 249).

#### ARTICLE 283.

PARAGRAPH 1. The local insurance office gives the parties affected an opportunity to express themselves concerning the application. Those sick funds, to which transferred members would have to belong in the future, are considered as affected, as well as the persons designated in article 282, paragraph 1.

PAR. 2. The local insurance office presents the application with the expressions of opinion and the amended constitution to the superior insurance office and expresses thereby its own opinion, so far as it has not itself caused the change.

#### ARTICLE 284.

PARAGRAPH 1. The superior insurance office specifies in its decision the date on which the amendment comes in force. There must be a minimum interval of four months between the decision and the date specified; in the case of closure of sick funds this term may be shorter in urgent cases.

PAR. 2. The parties affected have the right of appeal against the decision to the highest administrative authority.

#### ARTICLE 285.

PARAGRAPH 1. In the case of the consolidation of sick funds mutual agreement must be made between the sick funds affected according to articles 286 to 297.

PAR. 2. The highest administrative authority may determine particulars concerning the mutual agreement.

ARTICLE 286.

PARAGRAPH 1. The mutual agreement shall precede the decision of the superior insurance office.

PAR. 2. To bring about the mutual agreement the representatives of the sick funds affected meet on invitation of the local insurance office under the direction of its representative.

PAR. 3. If an agreement is effected thereby, it shall require the consent of the sick fund committees affected as well as the approval of the local insurance office. The decision committee may decline to grant the approval for important reasons.

ARTICLE 287.

If no agreement is effected, or if one of the participating committees does not consent, or the features objectionable to the local insurance office are not removed, the local insurance office (decision committee) takes charge of the arrangements.

ARTICLE 288.

PARAGRAPH 1. The sick fund which receives the other assumes the rights and obligations of the other sick fund, so far as articles 289 to 296 do not provide otherwise.

PAR. 2. Article 326 is applicable where amendments to the constitution become necessary.

ARTICLE 289.

The members of the admitted sick fund who are subject to insurance become members of the admitting sick fund. Members who are entitled to insure themselves voluntarily having the right to membership in the admitting sick fund. The members transferred thereby continue their insurance status without interruption.

ARTICLE 290.

PARAGRAPH 1. The admitting sick fund must take over the officials and employees of the admitted sick fund under the same or equivalent conditions.

PAR. 2. The officials and employees of the fund must accept with the admitting sick fund similar positions corresponding to their ability. They must also content themselves with another employment in the service of the sick fund which is not obviously unsuited to their abilities. They become subject to the service rules of the admitting sick fund; their total income shall not be reduced.

ARTICLE 291.

PARAGRAPH 1. The directorate of the sick fund which is to be admitted shall communicate without delay the decision of the superior insurance office (art. 284, par. 1) to the physicians and dentists to which the sick fund stands in contract relations. Within 14 days thereafter the physician or dentist may declare to the admitting sick fund his readiness to render service for it under the conditions which he had already agreed upon with the admitted sick fund, or under the terms which the admitting sick fund makes with its own physicians and dentists. If the admitting sick fund does not accept the offer without delay it must compensate the physician or dentist. If the physician or dentist has not declared his willingness within 14 days, the contract relation may be revoked by either party, beginning from this point of time, by observing three months' period of notice, but not sooner than the date of admission. Contractual rights to give notice at an earlier point of time are hereby not affected.

## 1274 WORKMEN'S COMPENSATION AND INSURANCE.

PAR. 2. This shall be correspondingly applicable for contract relations of the sick funds with owners and administrators of pharmacies, all classes of medical institutions, and with the persons enumerated in article 122, as also with dealers.

### ARTICLE 292.

The representatives of the sick funds affected and the local insurance office may determine that an admitted sick fund shall for a maximum period of four years be represented in the directorate of the admitting sick fund by a specified number of insured persons and employers.

### ARTICLE 293.

The fund which is to be admitted shall ascertain by a balance sheet (arts. 39, 40, and 261 of the Commercial Code) its net assets, and for each transferred member assign therefrom to the admitting sick fund an amount equivalent to the amount of net assets falling to each member of the admitting sick fund.

### ARTICLE 294.

PARAGRAPH 1. If there are still any free assets they are to be turned over to the admitting sick fund.

PAR. 2. If this amount is large enough the committee of the sick fund which is to be admitted may form thereof a special fund for the members which are to be transferred, from which they shall receive an increase in the funeral benefit. The increase must not exceed the amount of the funeral benefit according to articles 204 and 205, No. 3.

PAR. 3. The directorate of the admitting sick fund shall administer this special fund in accordance with the manner specified. If the last insured person transferred has left, the balance shall go in the reserve fund of the sick fund.

PAR. 4. If the admitting sick fund grants considerably higher benefits, the sick fund which is to be admitted has to turn over to it in advance an amount which according to a proper estimate will equalize the difference.

### ARTICLE 295.

If it can be shown that the employer or the guild have made voluntary gifts to an establishment fund or guild sick fund which is to be admitted, they may transfer a corresponding part of the free assets to the benefit of a special sick fund or a special endowment (art. 294, par. 3) for the members who are transferred.

### ARTICLE 296.

PARAGRAPH 1. Where a sick fund which is to be admitted does not possess the full per capita amounts (art. 293) or any net assets, it shall turn over only the assets on hand.

PAR. 2. If the balance sheet of an establishment fund or guild sick fund which is to be admitted shows a deficit the employer or the guild liable for these amounts must cover the deficit.

PAR. 3. If such a deficit becomes evident in a local or rural sick fund which is to be admitted, then the admitting sick fund for one year increase the contributions for the insured persons admitted, by a special assessment up to the maximum legal amount (art. 389).

### ARTICLE 297.

PARAGRAPH 1. The parties affected have the right of appeal to the superior insurance office (decision chamber) against the mutual arrangements approved or caused by the local insurance office. The decision of the superior insurance office is final.

PAR. 2. So far as the appealed decision relates to financial affairs, the superior insurance office may ask the accounting bureau of the Imperial Insurance Office to express its opinion.

ARTICLE 298.

PARAGRAPH 1. Mutual arrangements between the sick funds affected also take place if—

1. The districts of the sick funds are changed by a different delimitation of the administration districts;
2. In a district where up to the present time no general local or no rural sick fund existed, a sick fund of this kind is established;
3. A new sick fund of the same kind is separated from a general local or a rural sick fund.
4. Persons belonging to the same industry branch or the same kind of establishment after a majority decision make application to be separated from an authorized special local sick fund;
5. One of several establishments of an employer for which there exists a common establishment sick fund changes ownership and one of the employers affected applies for a separation;
6. An employer with his establishments separates from an authorized common establishment sick fund;
7. A part of the members separate from a guild sick fund because the membership class of the guild is to be delimited in a different manner or a compulsory guild is to be established;
8. A guild makes application to separate from an authorized common guild sick fund.

PAR. 2. For the mutual agreement articles 286 to 297 are correspondingly applicable.

PAR. 3. In the case of unimportant changes and of article 271, a mutual agreement may with the consent of the sick funds affected be done away with; article 288, paragraph 2, and article 289 are then also correspondingly applicable.

ARTICLE 299.

In the case of dissolution and closing of sick funds, their relations to others shall be regulated according to articles 300 to 305.

ARTICLE 300.

PARAGRAPH 1. In so far as members of a sick fund which has been dissolved or closed are present, the local insurance office after a hearing of their sick fund directorate, assigns them to the appropriate sick funds. The members entitled to insurance have the right of membership in the corresponding sick fund. The members transferred thereby continue their insurance status without interruption. Article 288, paragraph 2, is in such case correspondingly applicable.

PAR. 2. The superior insurance office (decision chamber) decides finally on appeals relating to the assignment.

ARTICLE 301.

PARAGRAPH 1. The directorate of the dissolved or closed sick fund shall wind up the affairs of the sick fund. Until the affairs are wound up the sick fund is considered as in continuance as far as the purpose of the liquidation so requires.

PAR. 2. The directorate gives public notice of the dissolution or closing. The payment of creditors who fail to present their claims within three months from the notice may be refused; the notice

shall call attention to this fact. Known creditors shall under the same reference be specially requested to present their claims. These provisions are not applicable to claims connected with the insurance.

#### ARTICLE 302.

PARAGRAPH 1. The directorate of the sick fund which is being dissolved or closed shall without delay notify the employees, physicians, and dentists with whom the sick fund has contract relations of the decision of the superior insurance office (art. 284, par. 1.) The contract relation terminates within three months after the notification, but at the earliest with the date of dissolution or closing. The notice shall call attention to this fact. Contractual rights to give notice at an earlier point of time are hereby not affected.

PAR. 2. This is correspondingly applicable to contract relations of the sick funds with pharmacy owners and pharmacy administrators, medical institutions of all classes, and with persons enumerated in article 122.

#### ARTICLE 303.

PARAGRAPH 1. If there are still any free assets after liquidation of the affairs, then the local insurance office, with consideration of the transfer of members, shall assign these assets to the sick funds.

PAR. 2. Article 295 is hereby correspondingly applicable in the case of establishment and guild sick funds.

PAR. 3. The superior insurance office (decision chamber) decides finally on appeals concerning the assignment.

#### ARTICLE 304.

Article 296, paragraph 2, is correspondingly applicable in the case of establishment funds and guild sick funds if the assets are not sufficient to pay off the creditors.

#### ARTICLE 305.

PARAGRAPH 1. Where the assets of a dissolved or closed local or rural sick fund are not sufficient to pay the claims of the officials, the union of communes shall make up the deficit; the official must accept a position offered him by the union. This provision is correspondingly applicable to the guild in the case of a guild sick fund.

### SECTION FOUR.—CONSTITUTION.

#### I. MEMBERSHIP.

##### 1. *Beginning and termination.*

#### ARTICLE 306.

The membership of persons subject to insurance begins with the date of their entrance in the employment subject to insurance.

#### ARTICLE 307.

The membership in the case of a newly created establishment sick fund begins for all persons subject to insurance employed in the establishment, with the date on which the sick fund comes into existence.

#### ARTICLE 308.

The above is applicable, with reservation of article 250, paragraph 3, to employees subject to insurance in establishments, with which guild members belong to a guild, in the case of the creation of a guild sick fund or the later admission of the employer to the guild.

#### ARTICLE 309.

PARAGRAPH 1. To which sick fund an insured person shall belong, who has at the same time several employment relations subject to insurance, shall be decided by his principal employment.



PAR. 2. In case of doubt, the employment relation into which he has first entered shall be decisive.

PAR. 3. The Federal Council may specify the particulars in such a case.

#### ARTICLE 310.

PARAGRAPH 1. The membership of persons entitled to insurance shall begin with the date of their admission to the sick fund. The admission is effected by written or oral application to the directorate or to the office of registration (art. 319).

PAR. 2. A sickness already existing at the time of admission does not entitle to benefits for this sickness. If the constitution makes the right of admission dependent on the presentation of a medical health certificate (art. 176, par. 3), the same must accompany the application.

PAR. 3. Persons entitled to insure themselves voluntarily, who apply for admission, may be subjected to a medical examination by the sick fund. It may refuse the applications of sick persons and such persons for whom the necessary medical health certificates according to paragraph 2 do not suffice, this refusal to take effect beginning with the application.

#### ARTICLE 311.

Persons unable to work retain their membership as long as the sick fund has to grant them benefits.

#### ARTICLE 312.

The membership ceases as soon as the insured person becomes a member of another sick fund or of a miners' sick fund.

#### ARTICLE 313.

PARAGRAPH 1. If a member who was insured on the basis of the imperial insurance or in a miners' sick fund at least 26 weeks in the preceding 12 months, or at least 6 weeks immediately previous thereto, leaves the employment subject to insurance, he may retain his membership in his class or grade of wages as long as he resides regularly in Germany and does not cease to be a member according to article 312. He may have himself transferred to a lower class or grade of wages.

PAR. 2. Whoever desires to retain his membership must notify the sick fund within three weeks after leaving, or in the case of article 311 after the termination of the benefits. If a member becomes ill in the second or third of these weeks, then with reservation of article 214 he has a claim to benefits only if he has given notice during the first week. The full payment, within the same time limit, of the contributions provided in the constitution is equivalent to the notification. With the approval of the superior insurance office the constitution may specify longer time limits.

#### ARTICLE 314.

PARAGRAPH 1. The membership of persons entitled to insure themselves voluntarily ceases if they have failed twice in succession to pay the contributions on the date when due, and if at least four weeks have elapsed since the first of these dates. The constitution may extend this time limit to the next following day of payment.

PAR. 2. If the directorate learns on good authority that the regular total annual income of a member entitled to insure himself voluntarily, exceeds 4,000 marks [\$952], it shall at once inform this member that his membership has ceased. The membership ceases with the delivery of the notification.

## ARTICLE 315.

If, after application in due form, a sick fund has accepted the contributions from a person subject to insurance, for three months in succession and without objection, it must recognize him as a member as long as there is no change in his employment status, at least until the date on which the directorate of the sick fund, in writing, refers him or his employer to another sick fund.

## ARTICLE 316.

In case the other sick fund contests his right to belong to it, the old sick fund must, with reservation of a later refund, continue to accept provisionally the contributions and to grant the benefits up to the time of the decision.

2. *Registration.*

## ARTICLE 317.

PARAGRAPH 1. Within three days from the beginning and termination of the employment the employers must register each person employed by them who is subject to membership in a local, rural, or guild sick fund at the place determined by the constitution or according to article 319. Changes in the employment status having influence on the insurance obligation shall also be registered within three days.

PAR. 2. The registration may be omitted if the work is interrupted for a shorter period than one week and if the payment of contributions is kept up. The constitution may extend the time limit for registration beyond the third day and up to the last working day of the calendar week.

PAR. 3. The sick fund may make an agreement with the administrations of Imperial or State establishments as to other methods of registration.

PAR. 4. The highest administrative authority may issue regulations regarding the form and contents of the registration notice.

## ARTICLE 318.

PARAGRAPH 1. The application must also contain the statements required by the constitution for the computation of contributions.

PAR. 2. Changes in these relations are to be reported within the time limit of registration.

PAR. 3. In the case of a change in wages the grade of wages does not change until the next payment of the contribution, unless the constitution provides otherwise.

## ARTICLE 319.

PARAGRAPH 1. The local insurance office may establish in its district joint registration offices for all or for several local, rural, and guild sick funds, or with the approval of the communal supervisory authority turn over the business of these funds to the local authorities.

PAR. 2. The costs shall be divided among the different sick funds in proportion to their annual revenues from contributions, unless the superior insurance office specifies a different basis.

## II. CONSTITUTION.

## ARTICLE 320.

PARAGRAPH 1. Before coming into existence, each sick fund shall draw up a constitution.

PAR. 2. It shall be drawn up in the case of—

Local and rural sick funds, by the union of communes after a hearing of the employers and insured persons interested;

Establishment sick funds, by the employer or his representative after a hearing of the employees;

Guild sick funds, by the general meeting of the guild with the participation of the journeymen's committee according to article 95 of the Industrial Code (*Gewerbeordnung*).

PAR. 3. If a fund is not established within the time limit finally decreed (art. 233, par. 2, and art. 249, par. 4), the local insurance office shall draw up a constitution for it.

#### ARTICLE 321.

The constitution must indicate the district of the sick fund and the class of its members and specify the following:

1. Name and seat of the sick fund;
2. Nature and extent of benefits;
3. Amount of contributions and time of payment;
4. Composition, rights, and duties of the directorate;
5. Composition and convocation of the committee and the method of forming its decisions, as also its representation in dealings with third parties in case of article 346, paragraph 1;
6. Drawing up of the preliminary budget;
7. Drawing up and acceptance of the annual accounts;
8. Amount of allowances according to article 21, paragraphs 2 and 3;
9. Method of issuing public notices;
10. Amendment of the constitution.

#### ARTICLE 322.

In the case of the local, rural, and guild sick funds the constitution must indicate the places for registration.

#### ARTICLE 323.

The constitution may not specify anything which contravenes the legal regulations or does not come within the purpose of the fund.

#### ARTICLE 324.

PARAGRAPH 1. The constitution, as well as the amendments thereto, requires the approval of the superior insurance office. When it gives its approval to the constitution, the superior insurance office shall at the same time specify when the sick fund comes into existence.

PAR. 2. The approval may be refused only by the decision chamber, and then only in case the constitution does not comply with the legal provisions.

PAR. 3. Where the law demands the approval for individual regulations of the constitution by the superior insurance office, the approval may be refused by the decision chamber only. The decision is final.

PAR. 4. The reasons for the refusal shall be stated.

#### ARTICLE 325.

Each member shall receive free a printed copy of the constitution and the amendments thereto; also, on application, each employer who employs members of the sick fund shall receive a copy.

#### ARTICLE 326.

PARAGRAPH 1. If it subsequently develops that a constitution according to article 324, paragraph 2, should not have been approved, the superior insurance office (decision chamber) shall decree the necessary amendment.

PAR. 2. If within one month the committee does not decide upon the amendment ordered by a final decree, the superior insurance office (decision chamber) shall issue the same with legal force.

PAR. 3. The same applies to amendments of the constitution ordered by a final decree, which are required by the provisions of this law.

### III. ADMINISTRATIVE BODIES OF THE FUNDS.

#### 1. *Organization of local and rural sick funds.*

##### ARTICLE 327.

The directorate and committee transact the affairs of the funds. The members of the committee may not belong to the directorate; if such are elected in the directorate, they must leave the committee.

##### ARTICLE 328.

PARAGRAPH 1. The members of the directorate elect from their own number the president of the directorate.

PAR. 2. Whoever receives the majority of votes, either from the group of employers or from that of the insured persons, is elected.

##### ARTICLE 329.

PARAGRAPH 1. When this majority can not be obtained the election is adjourned to another day.

PAR. 2. If also in the second session no election is effected, the directorate notifies the local insurance office. The latter appoints a representative who administers the rights and duties of the president at the expense of the sick fund until a valid election is effected. On appeal the superior insurance office decides finally. An employer may only then be appointed as representative if the majority of the group of employees does not object and an employee only if the majority of the group of employers does not object.

PAR. 3. A person employing only servants or nonpermanent workmen is not considered an employer in the meaning of paragraph 2.

##### ARTICLE 330.

The members of the directorate of the local sick fund elect from their number in a joint election one or more substitutes for the president.

##### ARTICLE 331.

PARAGRAPH 1. The representatives of the union of communes elect the president and the other members of the directorate of the rural sick fund, among which must be one or more substitutes for the president. One-third of these members must belong to the employers affected (art. 332, par. 2), and two-thirds to persons insured in the sick fund.

PAR. 2. The highest administrative authority may specify that the president and the other members of the directorate shall be elected in the same manner as the representatives in the committee according to article 336, paragraph 2.

##### ARTICLE 332.

PARAGRAPH 1. One-third of the committee consists of representatives of the employers affected and two-thirds of representatives of the insured persons. It has a maximum number of 90 representatives.

PAR. 2. An employer is considered as affected if he has to pay contributions to the sick fund for his employees subject to insurance, and if he is not to be counted among the insured persons according to article 14, paragraph 2.

##### ARTICLE 333.

PARAGRAPH 1. In the case of a local sick fund the employers affected who are of age and the insured persons who are of age elect their representatives from their own number, and this must be done in separate elections, under the direction of the directorate.

PAR. 2. The first election after the establishment of the sick fund takes place under the direction of a representative of the local insurance office; later elections only where no directorate exists.

PAR. 3. The voting power of the individual employers shall be proportioned according to the number of their employees subject to insurance; the constitution may graduate it and provide a maximum number of votes. Provisions relating to graduation and maximum voting power require the approval of the superior insurance office.

#### ARTICLE 334.

PARAGRAPH 1. The interval between the notice of an election (art. 333) and the election itself must amount to at least one month. The constitution may fix a longer minimum interval.

PAR. 2. The constitution may specify that the election shall take place according to districts or occupation groups.

#### ARTICLE 335.

The representatives of the employers and of the insured persons in the committee elect from their group in separate elections, the members of the directorate, as follows: The employers elect one-third, the insured persons two-thirds.

#### ARTICLE 336.

PARAGRAPH 1. In the case of a rural sick fund the representatives of the union of communes elect representatives from the number of the employers affected and from the number of the insured persons in the fund.

PAR. 2. In such districts of local insurance offices in which only urban and rural communes exist, but not independent manor districts, marks, or march districts (*selbständige Gutsbezirke, Gemarkungen oder ausmärkische Bezirke*), the State government may transfer the right to vote to the representatives of the individual communes and can specify the particulars thereto.

PAR. 3. It may be decreed for the territory or parts of territories of the federal State by a State law that the directorate and committee shall be elected in the same manner as in the case of the local sick fund.

#### ARTICLE 337.

Employers who are in arrears with the payment of contributions may be excluded by the constitution from eligibility and from the right to vote.

### 2. Composition of establishment and guild sick funds.

#### ARTICLE 338.

PARAGRAPH 1. Article 327 is correspondingly applicable to establishment sick funds.

PAR. 2. The directorate and the committee consist of the employer or his representative and of the representatives of the insured persons; the committee has a maximum number of 50 representatives of the insured persons.

PAR. 3. The employer or his representative is the president; he has one-half of the number of votes granted by the constitution to the insured persons.

#### ARTICLE 339.

The insured persons who are of age elect from their own number under the direction of the directorate their representatives in the committee of the establishment sick fund. Article 333, paragraph 2, and article 334, paragraph 1, are here applicable. These representatives elect from the insured persons their representatives in the directorate.

## ARTICLE 340.

A person who voluntarily continues his membership in an establishment sick fund is neither eligible nor has he the right to vote.

## ARTICLE 341.

PARAGRAPH 1. Articles 327, 332, 333, 334, paragraph 1, 335, and 337 are also applicable to guild sick funds. The guild appoints the president and his substitutes from the members of the directorate.

PAR. 2. If according to the constitution, (art. 381, par. 2) the employers are required to pay one-half and the insured persons the other half of the contributions, then each of them is entitled to half of the representatives in the committee, and the representatives elected by the employers elect one half of the members of the directorate, and those elected by the insured persons the other half.

3. *Duties.*

## ARTICLE 342.

The directorate administers the fund so far as the law does not provide otherwise.

## ARTICLE 343.

PARAGRAPH 1. The directorate is required, on demand, to give to the industrial supervisory officials information relating to the number and class of cases of sickness.

PAR. 2. The highest administrative authorities may specify the particulars herewith.

## ARTICLE 344.

The directorate must permit representatives of the carriers of the accident and of the invalidity and survivors' insurance to inspect in the office of the sick fund during business hours the books and lists for the purpose of ascertaining the number, time of employment, and amount of wages of their insured persons.

## ARTICLE 345.

PARAGRAPH 1. The committee decides on all matters which the law, constitution, or service regulations do not assign to the directorate.

PAR. 2. To the committee is reserved—

1. The determination of the preliminary budget.
2. The acceptance of the annual balance sheet.
3. The representation of the sick fund against the members of the directorate;
4. The decision on agreements and contracts with other sick funds;
5. The decision on the establishment of places of registration and of payment;
6. The amendment of the constitution;
7. The dissolution of the sick fund or the voluntary affiliation of it with other sick funds.

PAR. 3. Decisions according to numbers 6 and 7 need a majority both of the employers and the insured persons. In the case of amendments to the constitution a joint vote is sufficient, if such are decreed according to article 326, or if they relate to benefits or contributions, and do not run counter to article 388 or 389.

## ARTICLE 346.

PARAGRAPH 1. In the case of the acquisition, sale, or mortgaging of real estate, the sick fund shall be represented by the directorate and the committee.

PAR. 2. The approval of the committee is necessary for—

1. The service regulations for the employees which have been formulated or changed by the directorate (art. 355);

2. Decisions of the directorate relating to the establishment of hospitals and convalescent homes.

## ARTICLE 347.

PARAGRAPH 1. The committee regulates through sickness regulations the registration and control of sick persons as well as their conduct.

PAR. 2. These regulations require the approval of the local insurance office. If the approval is refused, the superior insurance office (decision chamber) decides finally on appeal.

PAR. 3. If notwithstanding a requisition of the local insurance office a sick fund does not submit within the time limit any sickness regulations, the superior insurance office (decision chamber) shall draw up such regulations and they shall be of legal effect. The same is applicable to amendments or additions which have been ordered by decree.

PAR. 4. With the approval of the fund and under agreement regarding the costs, the local insurance office may assist the sick fund in the control of sick persons. The decision committee decides concerning this matter. If the fund declines such aid, the superior insurance office decides finally on appeal.

## ARTICLE 348.

The committee specifies the method of remittance of contributions and of payment of benefits for members who do not reside in the district of the sick fund, and how the control of sick persons is to be regulated where such members are concerned.

## IV. EMPLOYEES AND OFFICIALS OF THE FUND.

## ARTICLE 349.

PARAGRAPH 1. The positions of officials and those employees to whom the service regulations (art. 351) are applicable, and which are paid from the means of the sick funds, shall be filled in the case of sick funds by concurring decisions of both groups in the directorate.

PAR. 2. If the groups can not agree, the decision is postponed to a later day. Should then no agreement be effected, the appointment may be decided on if more than two-thirds of those present vote for it; such a decision requires the confirmation of the local insurance office. It may only be refused on the basis of such facts which permit the conclusion that the person proposed lacks the necessary responsibility, especially for an impartial discharge of his official duties, or the ability requisite for the position.

PAR. 3. In case of a refusal of the confirmation, the superior insurance office (decision chamber) decides finally on appeal of the directorate.

## ARTICLE 350.

When no decision relating to an appointment is effected, or the confirmation is finally refused, the local insurance office appoints temporarily at the expense of the sick fund the persons necessary for the discharge of the duties of the position. If the appointees have administered the affairs during one year, the local insurance office may, with the approval of the superior insurance office, appoint them permanently to the position, unless a valid decision relating to an appointment has meanwhile been effected.

## ARTICLE 351.

PARAGRAPH 1. Service regulations must be formulated for the salaried employees of the sick funds who, according to State law, are not State or communal officials, or whose rights or duties are based on article 350.

PAR. 2. To employees who are employed only on probation, for temporary service, as a preparatory service, or who administer the office only incidentally without compensation, the service regulations are only applicable in so far as they expressly so provide.

#### ARTICLE 352.

The service regulations regulate the legal and the general service relations of the employees, especially the proof of their technical qualifications, their number, the class of appointment, the giving of notice or the discharge, and the determination of penalties. Technical qualifications must also be proved in some other manner than by the completion of a prescribed educational course.

#### ARTICLE 353.

PARAGRAPH 1. The service regulations must contain a scale of salaries. They shall regulate the following:

1. How long in case of involuntary disability the payment of the salary shall continue;
2. For what periods seniority increases of salary shall be granted;
3. Under what conditions a pension and survivors' relief shall be granted.

PAR. 2. They shall regulate also the requirements for promotion.

#### ARTICLE 354.

PARAGRAPH 1. Persons subject to the service regulations are appointed by written contract.

PAR. 2. The giving of notice of dismissal or the discharge of such employees shall, with reservation of paragraph 6, only be done on the concurring decision of the employers and insured persons in the directorate, or, in case such a decision is not effected, on decision of the majority of the directorate, with the approval of the presiding officer of the local insurance office; after 10 years of employment it may only take place for important reasons.

PAR. 3. Agreements relating to the right of the sick fund to give notice of dismissal must not place the employee in a worse position than he would be in the absence of an agreement according to the civil law.

PAR. 4. The giving of notice of dismissal or the discharge must not be forbidden in cases in which there are important reasons.

PAR. 5. Fines shall only be prescribed for not more than one month's salary.

PAR. 6. Employees who abuse their official position or their official affairs for the purpose of religious or political activity shall be reprimanded by the president of the directorate, and in the case of repetition, after they have been given an opportunity for a hearing, shall be discharged immediately; the discharge requires the approval of the president and of the local insurance office. Religious or political activity outside of official affairs and the exercise of the right of association shall not be prevented in so far as they do not conflict with the laws, and in themselves shall not be considered as reasons for giving notice of dismissal or for discharge.

#### ARTICLE 355.

PARAGRAPH 1. Before formulating the service regulations the directorate shall grant a hearing to the employees who are of age.

PAR. 2. In the directorate and also in the committee employers and insured persons decide separately on the service regulations.

PAR. 3. The service regulations require the approval of the superior insurance office. The directorate must designate to the superior insurance office those provisions of the service regulations on which the two groups in the directorate or committee have not



agreed and must give a statement of the relative vote. The superior insurance office decides on these provisions; in other respects it only may refuse the approval of the service regulations, if there is an important reason, especially if the number or the salaries of the employees are in striking disproportion to their duties.

PAR. 4. If the approval is refused, the highest administrative authority decides on appeal.

PAR. 5. The same is applicable to changes in the service regulations.

#### ARTICLE 356.

If, notwithstanding a requisition, a sick fund does not submit within the specified time limit any service regulations, the superior insurance office shall draw up the same and they shall have legal effect. The same is applicable to amendments or additions ordered by a decree.

#### ARTICLE 357.

PARAGRAPH 1. Decisions of the directorate or of the committee running counter to the service regulations shall be challenged by the president of the directorate through an appeal to the supervisory authority; the appeal effects a stay.

PAR. 2. If the directorate or its president does not make use of the right of giving notice of dismissal or of discharge against an employee, notwithstanding that there is a serious reason therefor, the local insurance office may require them to do so. On appeal of the directorate, the superior insurance office (decision chamber) decides finally on the decree.

PAR. 3. A provision of the employment contract running counter to the service regulations is invalid.

#### ARTICLE 358.

PARAGRAPH 1. The local insurance office (decision committee) decides in disputes relating to the service matters of employees subject to the service regulations. On appeal the superior insurance office decides finally. The imperial decrees (art. 35, par. 2) regulate the particulars concerning the procedure of discharge of an employee on account of contravention of the service regulations or in the case of article 354, paragraph 6, in accordance with the provisions of the imperial law for officials concerning the writ of accusation, admission of counsel for the defendant, hearing of the defendant, oral procedure, and passing upon the evidence.

PAR. 2. The following special provisions are applicable to pecuniary claims.

PAR. 3. The decision of the superior insurance office must precede the suit. Suit may only be brought within one month after the delivery of the decision of the superior insurance office; the time limit is a peremptory time limit in the meaning of article 223, paragraph 3, of the Code of Civil Procedure.

PAR. 4. Appeal to the regular courts is excluded where the determination of fines is concerned. The regular courts must accept the decisions of the insurance authorities on the question whether the period of dismissal having been observed, a notice of dismissal may be given for an important reason (art. 354, par. 2).

PAR. 5. Execution of the valid decisions of the insurance authorities takes place according to book eight of the Code of Civil Procedure.

#### ARTICLE 359.

PARAGRAPH 1. The directorate of a local, a rural, or a guild sick fund may, with the approval of the superior insurance office, employ officials for life or according to the State laws without recall or with the right to pension.

## 1286 WORKMEN'S COMPENSATION AND INSURANCE.

PAR. 2. In the case of a local, rural, or guild sick funds with over 10,000 insured persons the superior insurance office may, after a hearing of the sick fund, decree that at least the business directors shall be employed in this manner.

PAR. 3. The directorate may appeal against such a decree to the highest administrative authority.

PAR. 4. The State government may assign to officials appointed in this manner the rights and duties of State or communal officials.

PAR. 5. Article 357, paragraph 2, is applicable to the officials of the funds.

PAR. 6. No provision shall be made granting preference in the filing of vacancies to persons in possession of a certificate entitling the holder to a civil-service position (soldiers entitled to civil employment).

### ARTICLE 360.

Where, according to the State laws, the officials of communes and other public corporations, who are not appointed for life or without recall, are obliged to join a pension fund under State control or a similar institution, the State government may extend the provisions in force for this purpose to the corporations and their employees to the local, rural, and guild sick funds and their employees.

### ARTICLE 361.

Article 23, paragraph 1, is correspondingly applicable to managing officials or employees.

### ARTICLE 362.

PARAGRAPH 1. In the case of establishment sick funds the employer appoints at his expense and on his own responsibility the persons necessary to conduct the affairs. Article 24 is correspondingly applicable to these persons.

PAR. 2. Employees of establishment sick funds, who abuse their official position or their official affairs for the purpose of religious or political activity, shall be reprimanded by the president of the directorate, and in case of a repetition shall be immediately discharged, after having been given an opportunity for a hearing; article 357, paragraph 2, is then correspondingly applicable.

## V. ADMINISTRATION OF RESOURCES.

### ARTICLE 363.

PARAGRAPH 1. The resources of the sick fund shall only be used for the benefits provided by the constitution, for the accumulation of the reserve, for the administration expenses, and for the general purposes of the prevention of sickness.

PAR. 2. On the authorization of the highest administrative authorities it is permissible to use the resources of the sick fund for the attending of meetings which shall serve the legal purposes of sickness insurance.

### ARTICLE 364.

PARAGRAPH 1. The sick fund shall accumulate a reserve equal to the minimum amount of one year's expenses computed according to the average of the last three years and shall maintain it at this amount. For this purpose it shall use the parts of contributions paid by employers for members of substitute sick funds (art. 517, par. 2), and at least one-twentieth of the annual amount of the other contributions of the fund.

PAR. 2. In the case of establishment sick funds created by decree, the constitution, with the approval of the superior insurance office, may make other provisions.

## ARTICLE 365.

Securities of the sick fund which are not merely an investment of operating resources which are temporarily available, shall be kept in the custody of the union of communes, unless the local insurance office provides otherwise.

## ARTICLE 366.

The Federal Council shall specify the method and form of accounting.

## ARTICLE 367.

PARAGRAPH 1. The sick fund must submit to the local insurance office a balance sheet and also statements relating to—

1. Members.
2. Cases of sickness, cases calling for other benefits, and deaths.
3. Contributions received.
4. Benefits granted.
5. Kind and amount of reimbursement for medical treatment.
6. Number of physicians, specialists, dental surgeons, dental assistants, owners and administrators of pharmacies, and other such persons selling medicines, who give their services to the sick fund.

PAR. 2. The Federal Council shall specify the model forms and the time limits for transmitting them; it may extend the contents of the reports. The reports and balance sheets shall be compiled uniformly at least every four years for the Empire.

## VI. RELATION TO PHYSICIANS, DENTISTS, HOSPITALS AND PHARMACIES.

## ARTICLE 368.

The relations between sick funds and physicians shall be regulated by written contract; the sick fund may, with the exception of urgent cases, decline to make payments to other physicians.

## ARTICLE 369.

In so far as it would not seriously add to the expenses of the sick fund, its members shall be given the right to choose from at least two physicians. The insured person has free choice among the physicians appointed by the sick fund if he assumes himself the additional costs. But the constitution may specify, however, that the person under treatment may not change the physician during the same case of insurance or during the fiscal year without the approval of the directorate.

## ARTICLE 370.

PARAGRAPH 1. If the providing of medical care by a sick fund is seriously endangered by the fact that the sick fund can not make contracts on reasonable conditions with a sufficient number of physicians, or because the physicians do not observe the contract, the superior insurance office (decision chamber) may authorize the sick fund on its application and subject to revocation to grant in place of the care of patients and other necessary medical treatment a pecuniary benefit up to two-thirds of the average amount of their legal pecuniary sick benefit.

PAR. 2. The superior insurance office (decision chamber) may at the same time specify—

1. How the condition of the person who shall receive the benefits may be proved by other means than by medical certificates.
2. That the sick fund may discontinue or withhold the benefits until sufficient proof is submitted.
3. That the obligation of the sick fund to pay benefits ceases if sufficient proof is not submitted within one year after the claim becomes due.

4. That the sick fund may direct those to whom it has to grant medical treatment to go to a hospital, even if the conditions of article 184, paragraph 3, do not exist.

PAR. 3. The sick-fund directorate has the right of appeal to the highest administrative authority against the decision of the superior insurance office (pars. 1 and 2).

#### ARTICLE 371.

PARAGRAPH 1. The constitution may authorize the directorate to grant hospital treatment only in certain hospitals, and where the sick fund must grant hospital treatment, to decline to make payments to other hospitals, with the exception of urgent cases.

PAR. 2. Hospitals intended exclusively for charitable or general welfare purposes or established by public unions or corporations, and ready to give hospital treatment on the same conditions as the hospitals designated in paragraph 1, may only be excluded for an important reason and with the approval of the superior insurance office.

#### ARTICLE 372.

PARAGRAPH 1. If the medical treatment or hospital care of a sick fund does not satisfy the legal demands of the sick persons, the superior insurance office may, with reservation of article 370, decree at any time that these benefits shall be granted by other physicians or hospitals; the fund shall first be given a hearing.

PAR. 2. This decree shall only apply so long as its purpose requires, and must have the approval of the superior insurance office if it is to be in force for more than one year.

#### ARTICLE 373.

PARAGRAPH 1. If the decree is not carried out within the time limit specified, the superior insurance office may itself take the necessary measures at the expense of the sick fund. Contracts already made by the sick fund with physicians and hospitals are not affected.

PAR. 2. The fund may appeal against these decrees and measures within one week to the highest administrative authority.

#### ARTICLE 374.

Articles 368, 372, and 373 are correspondingly applicable in regard to the relations between hospitals and dentists.

#### ARTICLE 375.

PARAGRAPH 1. Within the territory of the sick fund, or with the approval of the local insurance office outside of it, the constitution may authorize the directorate to make preferential contracts with individual owners or administrators of pharmacies for the furnishing of medicines, or in the case of medicines which are for sale in the open market, also with other persons selling them. All owners and administrators of pharmacies in the territory of the sick fund may join in such agreements. The directorate may then, with the exception of urgent cases and with reservation of article 376, paragraph 3, decline to make payments for medicines furnished by other parties.

PAR. 2. Articles 372 and 373 are correspondingly applicable, if the supply of medicine granted by a sick fund does not satisfy the legal demands of the sick persons.

#### ARTICLE 376.

PARAGRAPH 1. The pharmacies shall grant to sick funds a discount on medicines from the tariff prices for medicines. The highest administrative authority determines its rate; it may make it dependent for the individual pharmacies on a specified minimum consumption by the sick fund.

PAR. 2. The superior administrative authority determines, with due consideration of local conditions and of the usual retail prices, the maximum prices of such common medicines which may be obtained (in the retail trade) without physicians' prescriptions. These maximum prices must not exceed the amount based on paragraph 1. The highest administrative authority may decree the particulars in this connection.

PAR. 3. If the beneficiaries procure the medicines designated in paragraph 2 from a pharmacy at a price not exceeding the specified price, the superior administrative authority may decree that the sick fund shall not decline payment for the reason that it has agreed on lower prices with persons who are not owners or administrators of pharmacies.

#### SECTION FIVE—SUPERVISION.

##### ARTICLE 377.

PARAGRAPH 1. With reservation of articles 372 to 375 the local insurance office exercises the supervision over the sick funds. It extends also to the observation of the service and sickness regulations.

PAR. 2. If the appeal against a decree of the local insurance office is based on the fact that the decree has no legal foundation and injures a right of the appellant or imposes on him an unwarranted liability, the superior insurance office (decision chamber) shall decide thereon.

PAR. 3. In the case of establishment sick funds for imperial or State establishments, the highest administrative authority may transfer to other authorities the duties of the local insurance office which do not come under the competence of the judgment committee.

##### ARTICLE 378.

As a representative of the sick fund, the local insurance office itself or through an authorized agent may bring forward claims of an establishment sick fund against the employer resulting from his administration of the resources and keeping of the accounts.

##### ARTICLE 379.

PARAGRAPH 1. So long as the persons entitled to vote refuse to elect the administrative bodies of the sick fund, the local insurance office (decision committee) shall appoint the members or the substitutes.

PAR. 2. So long as the directorate, or its president, or the committee, refuse to perform the duties they are charged with, the local insurance office shall execute them itself, or through an authorized agent, at the expense of the sick fund.

#### SECTION SIX—RAISING OF THE FUNDS.

##### I. CONTRIBUTIONS.

##### ARTICLE 380.

The means for the sickness insurance shall be collected from the employers and the insured persons.

##### ARTICLE 381.

PARAGRAPH 1. The persons subject to insurance must pay two-thirds, their employers one-third of the contributions.

PAR. 2. In the case of guild sick funds the constitution may specify that the employers must pay one-half and the persons subject to insurance the other half of the contributions. Where this is specified by an amendment to the constitution, the decision requires a majority of the representatives of the employers as also those of the insured persons.

PAR. 3. Persons entitled to insure themselves voluntarily must pay the whole of the contributions.

## ARTICLE 382.

The constitution may permit insured persons who temporarily draw lower wages to remain insured in their old higher class of wages, if they themselves undertake to pay the additional amount of the contributions or if the employer consents to such higher rating.

## ARTICLE 383.

PARAGRAPH 1. In case of disability no contributions are to be paid for the duration of the sickness.

PAR. 2. The same is applicable during the receipt of the maternity and pregnancy benefits.

## ARTICLE 384.

PARAGRAPH 1. The constitution may graduate the rates of the contribution according to the branches of industry and classes of employment of the insured persons, and provide for a higher proportion of the part paid by the employer in the case of individual establishments in so far as the risk of sickness is considerably higher.

PAR. 2. Sick funds with family benefits may collect from the insured persons with dependent families an additional contribution, which shall be specified by the constitution in a general manner. Articles 381, 382, and 385 to 403 are not applicable hereto.

PAR. 3. Where the constitution does not as a general rule allow sick benefits for Sundays and holidays, it may correspondingly raise the contributions for members for whom Sundays and holidays are working days.

PAR. 4. Provisions of this kind require the approval of the superior insurance office.

PAR. 5. If the directorate decrees higher contributions for an establishment, the employer has the right of appeal to the local insurance office. In the legal procedure the superior insurance office decides finally.

## ARTICLE 385.

PARAGRAPH 1. The contributions shall be fixed in a percentage of the basic wage in such a manner that, inclusive of the other revenues, they shall be sufficient for the permissible expenses of the sick fund.

PAR. 2. The sick fund shall not collect contributions for other purposes.

PAR. 3. Where doubts arise whether the constitution or its amendment fixes the contributions according to paragraph 1, the superior insurance office shall have the contributions examined by experts before approving them. If they are not sufficient, the approval shall depend on an increase of the contributions or in a reduction of the benefits to a rate not lower than the regular benefits.

## ARTICLE 386.

At the establishment of the sick fund the contributions may be fixed at not more than  $4\frac{1}{2}$  per cent. of the basic wage only if it is necessary in order to provide the regular benefits.

## ARTICLE 387.

If the receipts of the sick fund do not cover its expenses, inclusive of the amounts for the reserve, benefits shall be reduced to a rate not lower than the regular benefits or the contributions shall be increased, by an amendment to the constitution.

## ARTICLE 388.

The contributions may be increased to more than  $4\frac{1}{2}$  per cent. of the basic wage only for the purpose of providing the regular benefits, or on concurring decision of employers and insured persons in the committee.

## ARTICLE 389.

PARAGRAPH 1. If in the case of a local sick fund contributions as high as 6 per cent. of the basic wage do not cover the regular benefits, then the contributions may be further increased only on a concurring decision of the employers and of the insured persons in the committee.

PAR. 2. Otherwise the superior insurance office shall order, with reservation of article 268, the consolidation of the fund with other local sick funds. If this should not be possible, or if notwithstanding the consolidation the contributions are not sufficient to provide the regular benefits, the union of communes must pay from its own resources the necessary assistance. As long as this is done it may place the office of president of the sick fund in the hands of a representative.

## ARTICLE 390.

If in the case of a rural, an establishment, or a guild sick fund contributions to the amount of 6 per cent. of the basic wage do not cover the regular benefits, the union of communes, with reservation of article 265, paragraph 2, in the case of rural sick funds, or the employer in the case of establishment sick funds, and the guild in case of guild sick funds, must provide the necessary assistance from its own resources. As long as this is done, in the case of a rural sick fund the union of communes can place the office of president of the sick fund in the hands of a representative.

## ARTICLE 391.

PARAGRAPH 1. If to maintain or restore its solvency, a sick fund must quickly increase its revenues or reduce its expenses, the local insurance office (decision committee) may temporarily provide, until new regulations as provided by the constitution are made, that as far as necessary the contributions may be increased and the benefits reduced to not lower than the regular benefits; current benefits remain undisturbed.

PAR. 2. On appeal the superior insurance office decides finally.

## ARTICLE 392.

If the revenues of a sick fund exceed the expenses and the reserve has reached double the amount of its legal minimum, the contributions shall be reduced or the benefits shall be increased by means of an amendment to the constitution.

## II. PAYMENT OF THE CONTRIBUTIONS.

## ARTICLE 393.

The employers must pay the contributions for their employees subject to insurance on the days fixed by the constitution. The days for payment may at the most be one month apart. On the same days the persons entitled to insure themselves voluntarily must pay their contributions.

## ARTICLE 394.

PARAGRAPH 1. At the time of the payment of wages, the persons subject to insurance must permit their share of the contribution to be deducted from the cash wages. Only in this manner may the employers reimburse themselves for the shares of the contribution.

PAR. 2. The highest administrative authority may specify in what manner the share of the contributions of persons subject to insurance is to be refunded from their remuneration, if the same consists only of payments in kind or is paid by third parties.

## ARTICLE 395.

PARAGRAPH 1. The deductions for the share of contributions are to be divided evenly among the wage periods in which they fall.

The partial amounts may without imposing an additional burden on the insured persons be rounded off to amounts of even 10 pfennigs [2.38 cents].

PAR. 2. If deductions were not made for a wage period, they may be deducted only at the wage payment of the next wage period, if the contributions are not paid at a later time without any fault on the part of the employer.

PAR. 3. In the case of servants payments on account are not considered as wage payments.

#### ARTICLE 396.

PARAGRAPH 1. If the insured person is at the same time in several employment relations subject to insurance, the employers are collectively liable for the contributions.

PAR. 2. On application of one of the employers the local insurance office shall apportion the contributions.

#### ARTICLE 397.

PARAGRAPH 1. The contributions must be paid continuously until notice of leaving has been given according to the regulations.

PAR. 2. If the insured person leaves an employment between two pay days, and if due notice of his leaving has been given, the contributions paid in advance shall be refunded in proportion to the time.

PAR. 3. In case of establishment sick funds the contributions must be paid continuously until the termination of membership.

PAR. 4. The constitution can specify that contributions shall always be collected and refunded for full weeks.

#### ARTICLE 398.

PARAGRAPH 1. On application of a local, a rural, or a guild sick fund, as also on application of members of the administrative bodies of an establishment sick fund, the local insurance office (decision committee) may decree, with the right of revocation, that employers who are in arrears with the payment of contributions, and who in a process of execution have shown themselves to be bankrupt, shall pay their own share of the contributions only. The persons subject to insurance employed by them shall then themselves pay their share of the contributions on pay days.

PAR. 2. Against this decree the employer may appeal to the superior insurance office (decision chamber). It decides finally.

#### ARTICLE 399.

The decree must designate the employer to whom it is applicable, together with his name, residence, and place of business. He shall be notified of it in writing, as also the police authorities of his place of residence and of his place of business, if it be elsewhere. If the employer changes his residence or his place of business, the police authorities shall notify the competent authorities of his new place of residence or place of business.

#### ARTICLE 400.

The employer shall notify the persons subject to insurance employed by him of the decree by placarding it permanently in the work places, and at each wage payment call their attention to the fact that they themselves must pay their share of the contributions.

#### ARTICLE 401.

The local insurance office (decision committee) revokes the decree as soon as it has proof by the certificate of the sick fund directorate that all arrears and overdue obligations of the employer to the sick fund have been discharged.



## ARTICLE 402.

So long as the decree concerning employers who in a process of execution have been shown to be bankrupt has not been issued, they must make the deduction from the wages and must pay the amount, at the latest within three days, to the sick fund entitled thereto.

## ARTICLE 403.

The constitution of a local, a rural, or a guild sick fund may specify under what conditions the sick fund must demand advances from the employers.

## ARTICLE 404.

PARAGRAPH 1. On application of the sick funds affected the local insurance office (decision committee) may specify that the joint places of registration shall also be pay offices to accept contributions and pay benefits.

PAR. 2. With the approval of their supervisory authorities, it may transfer to the local authorities the business of the pay offices.

PAR. 3. The local insurance office may, with their consent and with an agreement as to the costs, assist the sick funds in the collection of the contributions.

PAR. 4. The communal supervisory authority may appoint, after a hearing of the sick fund, the officials conducting the business as officials to make compulsory collections.

## ARTICLE 405.

PARAGRAPH 1. If a dispute arises between the employer and his employees relating to the computation and apportionment of their share of the contributions, the local insurance office (decision committee) decides finally.

PAR. 2. If a dispute arises between an employer, or an insured person, or a person insured up to the present, or a person to be insured, and a sick fund relating to the insurance status or the liability to make, pay, or refund contributions, then the local insurance office (decision committee) shall decide and on appeal the superior insurance office shall decide finally.

PAR. 3. Final decisions as to the insurance status are binding for all authorities and courts. If the membership of an insured person has been definitely declined by all sick funds affected because they hold that he should belong to another of them, the sick fund to which he properly belongs shall be determined on application by the local insurance office (decision committee) or the superior insurance office (decision chamber) having jurisdiction of the funds, or in the absence of such by the highest administrative authority, without being bound by previous decisions.

## SECTION SEVEN.—FEDERATION OF FUNDS—SECTIONS.

## ARTICLE 406.

PARAGRAPH 1. On concurring decision of their committees, sick funds may combine in a federation of funds, if the seat is in the district of the same local insurance office.

PAR. 2. With the approval of the superior insurance office (decision chamber), or, if it is refused, with the approval of the highest administrative authority, a federation of funds may embrace districts or parts of districts of several local insurance offices. The superior insurance office specifies finally which local insurance office shall exercise the supervision.

## ARTICLE 407.

The federation of funds may do the following in common for the affiliated funds:

1. Appoint employees and officials;

2. Prepare or conclude contracts with physicians, dental surgeons, dental assistants, owners and administrators of pharmacies, or other dealers in medicines, with hospitals, as also for the furnishing of therapeutic appliances and other necessities for the care of patients;
3. Supervise the patients according to uniform principles;
4. Establish and conduct medical institutions and convalescent homes;
5. Defray the expenses for benefits up to one-half, or within this limit defray the expenses for specified kinds of sickness or cases of sickness up to the whole amount.

## ARTICLE-408.

PARAGRAPH 1. A constitution for the federation of funds shall be formulated by a concurring decision of the interested committees of the sick funds. It requires the approval of the superior insurance office. Article 324, paragraphs 2 and 4, is applicable to the refusal of the approval.

PAR. 2. Articles 4 to 34 are here correspondingly applicable.

## ARTICLE 409.

The constitution must specify the following:

1. Name and seat of the federation and of the affiliated funds;
2. Object of the federation;
3. Composition, election, rights, and duties of the directorate, and of the elected committee, if there be such;
4. Determination of the preliminary budget and acceptance of the annual balance sheet;
5. Assessment of the contributions for covering the expenses of the federation, as also the assessing and accounting of the subsidy, if such be necessary;
6. Amendment of the constitution.

## ARTICLE 410.

The provisions applicable to sick funds contained in articles 368 to 376 are also correspondingly applicable to federations of funds.

## ARTICLE 411.

PARAGRAPH 1. At the end of the fiscal year each sick fund may withdraw from the federation if it has submitted to the directorate a notice of withdrawal at least six months in advance.

PAR. 2. The committees of the funds affected may dissolve the federation by concurring decision.

PAR. 3. The fund which has withdrawn is collectively liable for the obligations of the federation existing at the time of its withdrawal. Claims against the fund on account of these liabilities lapse in two years after the withdrawal, so far as the claim against the federation is not subject to a shorter limitation; if the claim against the federation matures only after the withdrawal, the period of limitation begins with the date when it becomes due.

## ARTICLE 412.

PARAGRAPH 1. At the withdrawal of a fund or at the dissolution of the federation, each withdrawing fund receives a share of the net assets (art. 293), which corresponds for the last fiscal year to the proportion of its contributions to the total contributions to the federation. In the case of a deficit, each withdrawing fund shall contribute in the same proportion.

PAR. 2. Other arrangements may be made by the constitution or by mutual agreement.

## ARTICLE 413.

PARAGRAPH 1. The local insurance office has the supervision of the federation. Articles 377 to 379 are here correspondingly applicable.

PAR. 2. Articles 349 to 361 are correspondingly applicable to the employees of the federation; also articles 363 and 365 to the administration of the resources. The Federal Council may specify how far articles 366 and 367 are applicable.

PAR. 3. The local insurance office (decision committee) decides in case of a dispute between the federation and the different funds in regard to federation relations.

## ARTICLE 414.

For combinations of funds of other kinds, to promote the general objects of sickness relief, the resources of the funds shall only be used with the approval of both groups in the directorate. With the approval of the highest administrative authority, such combinations of funds may also undertake some of the special duties designated in article 407.

## ARTICLE 415.

With the approval of the superior insurance office, sick funds may establish sections for specified groups of their members or for specified districts and assign to them a part, but at the most two-thirds of the revenues and benefits. Particulars relating to organization, administration, duties, and competence, shall be specified in the constitution.

## SECTION EIGHT.—SPECIAL OCCUPATIONS.

## I. GENERAL PROVISION.

## ARTICLE 416.

The provisions of this book are applicable together with the special provisions of—

- Articles 417 to 434, to persons employed in agriculture;
- Articles 435 to 440, to servants;
- Articles 441 to 458, to persons employed temporarily;
- Articles 459 to 465, to persons employed in itinerant trades;
- Articles 466 to 493, to persons engaged in home industries and to their home-working employees;
- Article 494, to apprentices.

## II. AGRICULTURE.

## ARTICLE 417.

The following persons are considered as employed in agriculture:

1. If they are employed in agricultural subsidiary establishments (Arts. 918 to 921).
2. If they are employed in agricultural establishments which are subsidiary establishments of an industrial establishment, and according to article 540 are not insured in an industrial accident association (*Berufsgenossenschaft*), by the constitution of the same.

## ARTICLE 418.

PARAGRAPH 1. Whoever in case of sickness has a legal claim for relief against his employer which is equivalent to the benefits of the competent sick fund shall on application of the employer be exempted from the insurance obligation.

PAR. 2. The prerequisite is that—

1. The employer defrays the entire relief from his own resources;
2. His solvency is assured;

3. That he makes application for all of his agricultural employees in so far as they are obligated by contract for at least two weeks' regular work.

PAR. 3. Article 175 is hereby applicable with the provision that the superior insurance office in place of the local insurance office decides finally.

#### ARTICLE 419.

PARAGRAPH 1. The exemption is in force only for the duration of the labor contract. It ceases earlier if the employer registers all his exempt employees at the sick fund, or if the local insurance office itself, or on application of an exempt employee, determines that the employer is insolvent. The sick fund is not liable for benefits in cases of insurance which have already occurred when the exemption expires or which occur in the case of article 214 in the first three weeks after this lapse; this does not affect the claim of the person exempted against his employer.

PAR. 2. Article 313 is applicable to the persons exempted, but shall be construed as if these persons had been members of the sick fund up to the expiration of the exemption; articles 195 to 200, and 224, are here also correspondingly applicable.

#### ARTICLE 420.

PARAGRAPH 1. On application of the employer the contributions to the fund shall be correspondingly reduced for the duration of the labor contract, and the claim of the insured persons to a pecuniary benefit shall cease, if it is shown that at least—

1. The labor contract has been concluded for one year;
2. The insured persons are in receipt—

Either for the whole year, of payments in kind equivalent to 300 times the daily pecuniary benefit provided by the constitution,

Or for each working day, of a payment equivalent to this pecuniary benefit;

3. That they have a legal right to these benefits for the duration of the labor contract.

PAR. 2. If the insured person is sick and incapacitated for work beyond the duration of the labor contract, then his claim to a pecuniary benefit shall again come into force. The employer must refund to the sick fund the pecuniary benefit. Article 28 is correspondingly applicable.

PAR. 3. The contributions shall be reduced by the constitution with the approval of the superior insurance office, according to the relation of the pecuniary benefit to the value of the other benefits of the fund.

#### ARTICLE 421.

With the approval of the superior insurance office, the constitution may reduce the pecuniary benefit for insured persons who according to their labor contract are entitled in cases of sickness to benefits of less amount than those designated in article 420, paragraph 1, number 2; the contributions shall be correspondingly reduced.

#### ARTICLE 422.

PARAGRAPH 1. So far as the employer does not grant the relief (arts. 418 and 419), the sick fund shall on application of the person exempted grant the benefits provided by the constitution; if the employer does not furnish the benefits required by the contract (arts. 420 and 421), the fund must pay a pecuniary benefit to the sick member on application.

PAR. 2. The employer must reimburse the sick fund for what it has paid. Article 28 is correspondingly applicable.

PAR. 3. In disputes over the claim to reimbursement (par. 2, and art. 420, par. 2), the local insurance office decides in judgment procedure.

#### ARTICLE 423.

PARAGRAPH 1. With the approval of the superior insurance office, the constitution of a rural sick fund may specify that insured persons, who on the basis of the imperial insurance have been granted a permanent yearly pension amounting to 300 times the daily pecuniary benefit provided by the constitution, shall receive no pecuniary benefit.

PAR. 2. The contributions of these members shall be correspondingly reduced (art. 420, par. 3).

PAR. 3. With the approval of the superior insurance office, the constitution may specify a lower basic wage than the local wages for employees who are partially and permanently disabled.

#### ARTICLE 424.

With the approval of the superior insurance office, and as a general measure or for specified groups of insured persons, the constitution of a rural sick fund may reduce the pecuniary benefit to one-fourth of the local wages for the period from October 1 to March 31, or for a part of this period; it must reduce the contributions for the same period correspondingly or increase the pecuniary benefit within the limits permitted for the remainder of the period. The same is correspondingly applicable to house money.

#### ARTICLE 425.

The provisions of articles 420 to 423 applicable to the pecuniary benefit are also applicable to the other cash benefits of the fund with the exception of the funeral benefit.

#### ARTICLE 426.

For the territory of the federal State or for parts of it the highest administrative authority may permit the rural sick funds to introduce extended sick treatment for sick persons incapacitated for work.

#### ARTICLE 427.

The constitution may contain such provisions only if in the district of the rural sick fund—

1. The productive capacity of the agricultural employees or their employers would be impaired otherwise;
2. The presence of a sufficient number of hospitals and similar medical institutions assures the execution of the extended sick treatment.

#### ARTICLE 428.

Such provision requires the approval of the superior insurance office; in districts in which agricultural employees are already insured according to the general provisions of this book or according to the sickness insurance law the approval required is that of the highest administrative authority.

#### ARTICLE 429.

Extended sick treatment consists of medical treatment and maintenance in a hospital or a similar medical institution in the place of the care of patients and of the pecuniary benefit. This extended benefit is considered as a regular benefit.

#### ARTICLE 430.

PARAGRAPH 1. A disabled sick person need not be removed to a medical institution if, according to a medical opinion, it would not promote his cure.

PAR. 2. If through no fault of his own the disabled sick person is not taken to a medical institution, then the rural sick fund must

grant the legal sick relief. The constitution may specify that under the conditions mentioned in articles 420 and 421 the pecuniary benefit shall not be paid entirely or partly, but shall be credited to the contributions of the insured persons which will become due at the next time of payment.

#### ARTICLE 431.

As long as the sick person declines hospital treatment in a case where such treatment requires his own consent, according to article 184, he has only a claim to medical treatment and to half the pecuniary benefit if he has up to the present supported his relatives either wholly or principally with his earnings, unless the constitution provides otherwise.

#### ARTICLE 432.

PARAGRAPH 1. The constitution shall specify in the case of extended sick treatment whether and in what amount house money is to be granted in addition to the hospital treatment.

PAR. 2. Where the constitution prescribes extended sick treatment it may at the same time fix a maximum funeral benefit of 30 marks [\$7.14].

PAR. 3. The constitution may confine the granting of extended sick treatment to cases of insurance occurring during unemployment and within three weeks after membership has ceased.

PAR. 4. It shall correspondingly reduce the contributions for the insured persons who in case of sickness are entitled only to the extended sick treatment.

#### ARTICLE 433.

If the constitution of a rural sick fund contains specifications according to articles 423 to 432, the constitutions of agricultural establishment sick funds which have their seat in the district of the rural sick fund may specify the same regulations.

#### ARTICLE 434.

Articles 503 and 517 to 520 are not applicable to agricultural employees with exception of the gardeners and of industrial workmen temporarily employed in agriculture; the Federal Council shall specify what employments shall be considered as temporary.

### III. SERVANTS.

#### ARTICLE 435.

Articles 418, 419, 422, and 426 to 434 are also applicable to the insurance of servants; however, the introduction of the extended sick treatment is not restricted by the conditions mentioned in article 427, paragraph 1, and the superior insurance office is always the competent office for the approval. On application of the employer or of the insured person, removal to a medical institution shall not occur if, according to a medical opinion, it is not necessary.

#### ARTICLE 436.

The employer may deduct the pecuniary benefit from the wages which he must continue to pay to the servant during the sickness.

#### ARTICLE 437.

Even where the constitution does not provide for extended sick treatment, the sick fund must grant it on application of the employer or of the servant, to a servant residing in the household, if the sickness is contagious; or if because of the nature of the sickness he can not be treated or taken care of in the household or this can be done only with considerable inconvenience to the employer.

## ARTICLE 438.

PARAGRAPH 1. In a dispute between the employer and the sick fund in regard to this kind of obligation (art. 437) the local insurance office decides finally.

PAR. 2. On its application the local insurance office may exempt the sick fund from the extended sick treatment in cases where without fault on the part of the sick fund such treatment can not be provided.

## ARTICLE 439.

If servants are also employed in the establishment or in another business undertaking of the employer, such employment, so far as it is not by itself exempt from insurance according to article 168, shall be determinative for their insurance and for the claims against the employer which they have in cases of sickness according to the law or constitution.

## ARTICLE 440.

PARAGRAPH 1. The State government may specify that servants are exempt from insurance according to this law if, at its publication, relief provision in case of sickness has been provided for them by State law.

PAR. 2. In extent and duration this relief must be at least equivalent to the regular benefits of the sick funds, or must be made equivalent within six months after the coming into force of this law.

PAR. 3. The contributions collected for a servant in this connection must not be higher than the shares of contribution that he would have to pay according to this law.

## IV. TEMPORARY EMPLOYMENT.

## ARTICLE 441.

The employment is defined as temporary if by its nature it is restricted to less than one week, or if it is restricted by the labor contract in advance.

## ARTICLE 442.

PARAGRAPH 1. Persons employed temporarily who are not exempt from insurance according to article 168 shall be insured in the general local sick fund, or if they are principally employed in agriculture in the rural sick fund of their place of residence.

PAR. 2. The sick fund must keep an alphabetical members list of such persons and must keep it up to date.

PAR. 3. The membership in the sick fund begins with the registration in this list.

## ARTICLE 443.

As soon as a sick fund is informed that a temporarily employed person of its district does not belong to a sick fund, although subject to insurance, it must itself register such employee.

## ARTICLE 444.

PARAGRAPH 1. Persons subject to insurance must report themselves for registration.

PAR. 2. The local insurance office, the communal and the police authorities, the place of issue of receipt cards (art. 1419), as well as the administrative bodies and the employees of the insurance carriers, must notify the proper sick fund of every person subject to insurance who is temporarily employed and who is not already a member of a sick fund.

PAR. 3. The highest administrative authority may regulate the particulars concerning this duty.

## ARTICLE 445.

The sick fund may summon persons employed temporarily to decide upon their insurance obligation and compel them by a fine of not more than 10 marks [\$2.38] to comply with the summons.

## ARTICLE 446.

The person registered continues to be a member also during the time in which he is not temporarily employed for compensation.

## ARTICLE 447.

PARAGRAPH 1. The insured person shall on his resignation be taken off the list if he produces proof that he has become a member of another fund, or that he has given up the temporary employment and has done so not merely temporarily.

PAR. 2. He shall also be taken off the list if the sick fund establishes these facts in any other manner, or if it learns that the insured person has died or has moved to the district of another sick fund.

PAR. 3. A person who has been taken off the list may continue to be a member according to article 313. The constitution shall specify the particulars concerning contributions and benefits.

## ARTICLE 448.

PARAGRAPH 1. If the insured person again resigns from the other sick fund (art. 447), or again takes up the temporary employment, he shall immediately apply again for registration in the list.

PAR. 2. The sick fund shall supervise the insurance status of such persons.

## ARTICLE 449.

PARAGRAPH 1. If the insured person has been registered by an employer at his sick fund according to article 317, then this fact is to be noted on the list.

PAR. 2. Membership based on this registration continues the earlier membership without interruption.

PAR. 3. After notice of leaving has been given through the employer, the notation on the list shall be canceled.

## ARTICLE 450.

PARAGRAPH 1. The contributions and the benefits shall be established by the constitution in each case according to the local wage rates; in such case it may increase supplementary charges the rates of local wages for individual groups of persons temporarily employed. The approval of the superior insurance office is required for the rates so established.

PAR. 2. Paragraphs 2 and 3, of article 423, may be applied.

PAR. 3. The sick fund shall enter these contributions and benefits in separate accounts.

PAR. 4. The persons employed temporarily must themselves pay their share of the contribution (art. 381, par. 1).

PAR. 5. They have a claim to additional benefits of their sick fund provided by the constitution only in so far as the constitution so specifies.

## ARTICLE 451.

PARAGRAPH 1. The constitution may specify that persons employed temporarily shall have a claim to sick-fund benefits only after a waiting term of not more than 6 weeks.

PAR. 2. If an earlier membership existed not longer than 26 weeks previous, then its duration shall be included in the waiting term.

## ARTICLE 452.

PARAGRAPH 1. If a person employed temporarily before his sickness, has not paid his share of the contributions for more than 8



weeks during the last 26 weeks, he shall receive only medical treatment; the funeral benefit may not exceed 30 marks [\$7.14].

PAR. 2. The same is applicable to an insured person who has been a member less than 26 weeks, if he has not paid his share of the contributions for more than one-fourth of the duration of the insurance.

#### ARTICLE 453.

At the end of each quarter the union of communes must pay to the sick fund the total amount of the shares of the contributions of the employers, for which an account is submitted.

#### ARTICLE 454.

PARAGRAPH 1. The union of communes may assess this amount in such a manner that it is paid either by all the inhabitants of the sick-fund district, or separately by the local sick funds and the rural sick funds of the district according to the number of inhabitants affected.

PAR. 2. Inhabitants who are accustomed to employ persons temporarily either in large numbers, or for long periods of time, shall be assessed at a higher rate in such cases.

#### ARTICLE 455.

PARAGRAPH 1. With the approval of the union of communes and of the superior insurance office, the constitution may specify that persons temporarily employed shall not pay any share of the contributions.

PAR. 2. In such a case the sick fund shall grant them only the benefits described in article 452, paragraph 1.

#### ARTICLE 456.

PARAGRAPH 1. The State government may specify how far an approval is necessary for decisions of the union of communes made according to articles 454 and 455.

PAR. 2. It may specify the legal procedure permissible against the assessment (art. 454).

#### ARTICLE 457.

In their capacity as employers of temporary employees, as well as persons temporarily employed who do not pay any contributions according to article 455, they are neither entitled to hold office in the sick fund nor entitled to vote.

#### ARTICLE 458.

PARAGRAPH 1. For the federal State or for parts of it, the State government may regulate the registration and payment of contributions for persons temporarily employed in other ways.

PAR. 2. The State government may also decree that persons temporarily employed shall be insured according to the general provisions of this book, though if they are employed in agriculture, then according to the provisions specially applicable thereto, if the State government itself or a statute of the union of communes or the constitution of the sick fund, takes care that the insurance, especially the registration, shall be administered properly and that the contributions shall be correctly paid.

### V. ITINERANT TRADES.

#### ARTICLE 459.

PARAGRAPH 1. The employer, who must have an itinerant trade license, must register the persons employed in his itinerant establishment, if he intends to take them with him from place to place; he must, however, register only their number and have this number made members in the rural sick fund of the place where he applied for the license from the police authority.

## 1302 WORKMEN'S COMPENSATION AND INSURANCE.

PAR. 2. Employees in excess of the number registered and for whom he has requested a permit only after the receipt of the license according to article 62 of the Industrial Code must be registered through the intervention of the authority competent for this permit.

### ARTICLE 460.

PARAGRAPH 1. At the registration the employer must pay in advance the contributions either for the period up to the expiration of the itinerant trade license, or for a shorter period, with the permissions of the directorate of the fund.

PAR. 2. If the license or the permit (art. 459, par. 2) is revoked or the establishment shuts down otherwise, then the directorate on application shall refund the excessive contributions; the directorate shall also make a refund for the full calendar weeks, for which it can be shown that the employer did not take the persons with him.

### ARTICLE 461.

PARAGRAPH 1. In the case of article 459, paragraph 1, the sick fund shall certify according to the model form determined by the federal council, the contributions which have been received or postponed, together with a statement of the basic wage and of the weekly contribution. This certificate is to be submitted to the police authorities when application is made for the itinerant trade license.

PAR. 2. In the case of article 459, paragraph 2, the contribution shall be paid to the authority there designated, and shall be transmitted by them to the competent rural sick fund.

PAR. 3. The itinerant trade license may be granted only if the certificate is produced, the permit only if the contributions have been paid.

PAR. 4. The basic wage and the weekly contributions shall be stated on the itinerant trade license.

### ARTICLE 462.

PARAGRAPH 1. The insured person shall receive the regular benefits of the sick funds. Article 382 is not applicable to them. The constitution may specify that the insured person on his own application shall also have a claim to the additional benefits of the sick fund as long as the persons to whom they are to be granted remain in the district of the sick fund.

PAR. 2. If the sick fund grants more to its other members, it may correspondingly reduce the contributions of persons employed in itinerant trades.

### ARTICLE 463.

PARAGRAPH 1. For the periods which are not more than one month back the employer may deduct from the wages of the insured persons two-thirds of the contributions paid by him for them.

PAR. 2. The local insurance office of the place where they are staying decides in a dispute as to the deductions.

### ARTICLE 464.

A person who carries on an itinerant trade for another (art. 60d, par. 2, of the Industrial Code) shall have the rights and duties of the employer according to articles 459 to 463.

### ARTICLE 465.

PARAGRAPH 1. The Federal Council may specify the particulars for the execution of articles 459 to 464.

PAR. 2. It may specify how far persons who are employed by an employer without itinerant trade license in his itinerant trade establishment (art. 59 of the Industrial Code) and whom he takes with him from place to place, are subject to insurance, and it may regulate their insurance otherwise than as stated in articles 459 to 464.

## VI. HOME-WORKING INDUSTRIES.

## ARTICLE 466.

PARAGRAPH 1. Persons engaged in home-working industries, who are not exempt from insurance according to article 168, shall, so far as the law does not otherwise prescribe or permit, be insured in the rural sick fund in whose district they have their own working place, without regard to the seat of the establishment of the person who gives them the order.

PAR. 2. Their home-working employees shall be insured in the same fund.

## ARTICLE 467.

The Federal Council may specify under what conditions persons engaged in home-working industries, to whom a yearly total minimum income of 2,500 marks [\$595] is assured, may on their application, be exempted from insurance as regards their own person.

## ARTICLE 468.

PARAGRAPH 1. Article 442, paragraphs 2 and 3, and articles 443 to 449, are correspondingly applicable to persons engaged in home-working industries and their home-working employees (persons engaged in home-working industries subject to insurance).

PAR. 2. Without prejudice to these provisions, persons engaged in home-working industries who regularly employ, apart from the members of the family in the household, at least two persons subject to insurance as home workers, shall register themselves and all employees in the sick fund for the purpose of entry in the list according to articles 317 to 319, and shall withdraw the names in the same manner.

## ARTICLE 469.

The resources for the sickness insurance shall be raised partly by subsidies from those persons on whose order and for whose account the work is done on the home-work system (subsidies of the persons giving the order), partly from the persons engaged in home-working industries themselves and partly from their home-working employees (contributions).

## ARTICLE 470.

PARAGRAPH 1. The subsidies of the persons giving the order shall be based only on the wages which they pay to the persons engaged in home-working industries for the delivered work; no attention shall be paid to the facts as to whether the individual person engaged in home-working industries belongs to a sick fund, to which sick fund he belongs, or what contributions he pays for himself and his employees in the fund.

PAR. 2. The value of raw materials and supplies which the person engaged in a home-working industry has furnished, may be left out of consideration in computing the wages.

## ARTICLE 471.

The subsidies of the persons giving the order shall be computed uniformly for all industry branches and for the territory of the Empire in such a manner that in any one year their total amount shall cover half of the total cost which would accrue to the rural sick funds if they should grant the regular benefits with the local wages as the basic wage, and if all persons engaged in home-working industries subject to insurance should belong to them.

## ARTICLE 472.

PARAGRAPH 1. The subsidies of the persons giving the order are fixed up to December 31, 1914, at 2 per cent. of the wages paid.

PAR. 2. Thereafter the Federal Council shall determine them for four-year terms after a hearing of the accounting bureau of the Imperial Insurance Office; for the first 10 years after the coming in force of this law the Federal Council is not restricted to these periods.

#### ARTICLE 473.

PARAGRAPH 1. During the first week of each month, the person giving the order must transmit to the rural sick fund of the seat of his establishment a list of the persons engaged in home-working industries employed during the past month.

PAR. 2. Where no rural sick fund exists for the seat of the establishment of the person giving the order, the list is to be transmitted to the general local sick fund.

#### ARTICLE 474.

PARAGRAPH 1. In the list there shall be stated the name and the seat of the establishment of the person engaged in home-working industries as well as the amount of the earnings.

PAR. 2. If the value of the raw and other materials furnished by the person engaged in home-working industries have been included, then the quantity and value of these materials shall also be given as well as the amount actually paid after deduction of their value.

#### ARTICLE 475.

PARAGRAPH 1. On application of the person engaged in home-working industries, the local insurance office competent for his residence determines finally as to the value of the raw and other materials.

PAR. 2. For industries in which home work is customary in the district, the local insurance office shall itself determine the average value of raw and other materials and verify such valuations from time to time. On appeal the superior insurance office decides finally. On application, the local insurance office communicates the average value to the person engaged in home-working industries, the person who gives the order, and to his sick fund (art. 473).

#### ARTICLE 476.

This fund must communicate the list of persons engaged in home-working industries not insured with itself, to the fund in which they are designated as members. In case of doubt the list shall be communicated to the proper fund by the local insurance office to which the working place of the person engaged in home-working industries belongs.

#### ARTICLE 477.

PARAGRAPH 1. When transmitting the lists, the person who orders the work shall pay the subsidies due. The computed amounts are to be rounded off to even pfennigs.

PAR. 2. Until the time of the mutual balancing of accounts (art. 492, par. 2) the fund must keep in custody the subsidies paid to it for the account of other funds.

#### ARTICLE 478.

PARAGRAPH 1. The fund to which the person engaged in home-working industries belongs, must credit him with the subsidies paid for him according to the lists.

PAR. 2. If subsidies have been paid by the persons giving the order for noninsured persons, or if for other reasons the subsidies cannot be credited to an insured person, the fund must use them to cover any deficits which arise out of the insurance of persons subject to insurance in home-working industries.

PAR. 3. If the result of the last three fiscal years shows that a considerable surplus is available, it must be used for the purpose of reducing the contributions or of increasing the benefits for persons subject to insurance in home-working industries.

## ARTICLE 479.

PARAGRAPH 1. The provisions relating to disputes over contributions (art. 405) are correspondingly applicable to disputes over subsidies.

PAR. 2. The persons giving the order have the status of employers for the purposes of articles 137 to 140.

## ARTICLE 480.

PARAGRAPH 1. The constitution shall determine specifically the contributions which persons engaged in home-working industries must pay for themselves and for their home-working employees, as well as the sick benefits for these persons.

PAR. 2. The local wages serve as the basic wage.

## ARTICLE 481.

PARAGRAPH 1. The contributions are to be computed in such a manner that, together with the subsidies of the persons who give the order, they shall cover the cost which accrues to the fund from the insurance of its members engaged in home-working industries.

PAR. 2. As long as the amount of the subsidies can not be approximately determined, the contributions of the members engaged in home-working industries are to be computed in such a manner that they shall cover one-half of the cost which would accrue to the sick fund by granting the regular benefits to these members.

PAR. 3. The general provisions relating to contributions are correspondingly applicable to the contributions which the person engaged in home-working industries has to pay for himself and his home-working employees.

## ARTICLE 482.

PARAGRAPH 1. The sick benefits shall consist of a pecuniary benefit in addition to medical treatment.

PAR. 2. The amount of the pecuniary benefit is based on the amount of the subsidies of persons giving orders which have been credited to the person engaged in home-working industries. Unless the constitution specifies otherwise, the pecuniary benefit in such case stands in the same relation to the legal pecuniary benefit as the amount of the subsidies credited during the last fiscal year to the person engaged in home-working industries stands to that of all the contributions, which the person engaged in home-working industries has paid during this period; higher benefits than those prescribed by the constitution shall not be granted.

PAR. 3. If the insurance has been in force only a short time then the contributions of this period only shall serve as basis.

## ARTICLE 483.

With the approval of the superior insurance office the constitution may specify how far the pecuniary benefit shall be reduced or withheld, if the person engaged in home-working industries is in arrears with his contributions.

## ARTICLE 484.

PARAGRAPH 1. Whatever is applicable to the pecuniary benefit is also applicable to the other cash benefits of the fund, but with the exception of the funeral benefit.

PAR. 2. With the approval of the superior insurance office the constitution may graduate the funeral benefit according to article 482, paragraphs 2 and 3.

## ARTICLE 485.

PARAGRAPH 1. On his application the fund shall permit the person engaged in home-working industries to pay double the amount of the contributions. The constitution may specify the particulars, such as when he may make the application and withdraw it. The share of the contributions of his home-working employees is not changed in such cases.

PAR. 2. In this case the subsidies paid in for him shall be paid over or credited to the person engaged in home-working industries. He and his employees subject to insurance are entitled to the full benefits which the constitution prescribes for insured persons engaged in home-working industries.

PAR. 3. The subsidies shall also be paid over or credited to persons engaged in home-working industries who are insured on account of other employment subject to insurance.

## ARTICLE 486.

PARAGRAPH 1. If persons engaged in home-working industries are permanently employed only by the same person giving the order, with their consent he may also pay their contributions.

PAR. 2. He may then collect the contributions from the person engaged in home-working industries in the same manner as an employer collects the share of contributions from insured persons. The payment of the earnings is in such a case considered as the same as the payment of wages.

## ARTICLE 487.

Articles 426 to 432 are here correspondingly applicable.

## ARTICLE 488.

PARAGRAPH 1. If when this law comes into force the insurance of persons engaged in home-working industries is already regulated by statutory provisions for a given district or an industry, then the highest administrative authority may on application of the communes or of the union of communes affected permit the statutory provisions to remain in force.

PAR. 2. The approval is conditional upon the fact that the person giving the order and the person engaged in home-working industries have their establishment seat in the district of the local insurance office, or in the larger district determined by the highest administrative authority according to local requirements, and that the benefits granted to persons engaged in home-working industries are at least equivalent to those granted by this law.

PAR. 3. Amendments to the statutory provisions require the approval of the highest administrative authority.

PAR. 4. Subsidies received from other persons giving orders to one engaged in home-working industries shall be paid or credited to him.

## ARTICLE 489.

PARAGRAPH 1. The union of communes may by statute exempt the person subject to insurance engaged in home-working industries from the obligation of contribution and assume itself the costs, in so far as they are not covered by the subsidies of the persons giving the order; article 485, paragraphs 1 and 2, is then applicable.

PAR. 2. In such a case it may be specified that the fund shall grant to these persons subject to insurance only the benefits designated in article 452.

PAR. 3. The statute must have the approval of the superior insurance office (decision chamber), and the provisions of paragraph 2 must have the approval of the highest administrative authority.

## ARTICLE 490.

PARAGRAPH 1. The State government may decree that in districts in which the persons engaged in home-working industries are unable to pay contributions, the union of communes shall assume the costs designated in article 489, paragraph 1.

PAR. 2. The insured persons engaged in home-working industries shall then receive only the benefits specified in article 452; article 485, paragraphs 1 and 2, is not applicable.

## ARTICLE 491.

PARAGRAPH 1. Where persons engaged in home-working industries are employed by intermediaries, such as persons who give the work out, factors, or subcontractors (*Zwischenmeister*) on the order of a third party, then the latter is considered as the person who gives them the order.

PAR. 2. The Federal Council may transfer to the intermediaries either all or part of the duties of the person who gives the order; the person who gives the order must refund to them the subsidies already paid.

## ARTICLE 492.

PARAGRAPH 1. The Federal Council shall specify the manner in which the provisions relating to the insurance of persons engaged in home-working industries shall be executed.

PAR. 2. It shall especially regulate the manner in which the sick funds shall account for the subsidies among each other. It may order the participation of the accounting bureau of the Imperial Insurance Office in the accounting. It shall draw up the model forms for the lists and shall specify the bases which must be submitted for the reexamination of the subsidies.

## ARTICLE 493.

The Federal Council may specify the manner in which German persons who give orders to foreign persons engaged in home-working industries may be drawn on for contributions for the sickness insurance of persons engaged in home-working industries which they would have to pay if they employed Germans, and how these payments are to be used. It may punish contraventions of these provisions with a fine of not more than 300 marks [\$71.40].

## VII. APPRENTICES.

## ARTICLE 494.

PARAGRAPH 1. No pecuniary benefit shall be granted to any class of apprentices who are employed without compensation.

PAR. 2. The contributions shall be correspondingly reduced.

## SECTION NINE.—MINERS' SICK FUNDS.

## ARTICLE 495.

PARAGRAPH 1. In their constitutions the miners' sick funds must grant to their members at least the regular benefits of the local sick funds.

PAR. 2. With the approval of the supervisory authority, they may pay the pecuniary benefit otherwise than weekly, but in no longer intervals than semimonthly.

## ARTICLE 496.

Miners' sick funds may collect an entrance fee from members who can prove that they have already belonged to another sick fund, only if more than 26 weeks have elapsed between the resignation and admission.

## ARTICLE 497.

An application for exemption from compulsory insurance according to article 173 shall require the consent of the majority of votes both from the group of employers in the directorate and from the group of the insured persons.

## ARTICLE 498.

PARAGRAPH 1. Articles 206 and 383 are applicable to the members.

PAR. 2. If the constitution specifies a waiting term for the claim to additional benefits, then members who leave for the purpose of performing their term of service in the Army or Navy may interrupt this waiting term for the duration of the service period, as well as for a maximum of 26 weeks additional. No new entrance fee shall be collected from them in this case.

## ARTICLE 499.

PARAGRAPH 1. The provisions of articles 119, 223, paragraphs 2 and 3, relating to transfer, assignment, attachment, and charging up of insurance claims, are applicable to all benefits which the miners' associations or sick funds must pay according to this law or to the State laws.

PAR. 2. The highest administrative authority shall specify which authority is competent for the approval according to article 119, paragraph 2.

## ARTICLE 500.

PARAGRAPH 1. Articles 211 to 214, 219 to 222, 224, 313, and 314 are here correspondingly applicable.

PAR. 2. If the place of residence of a sick person belongs to the territory of a miners' sick fund, the latter must grant the preliminary relief, urgent cases excepted.

## ARTICLE 501.

PARAGRAPH 1. The representatives of the insured persons in the general meeting (miners' elders) in the directorate of the miners' sick funds, miners' associations, and miners' funds, must be elected by secret ballot. Election according to the principles of proportionate representation is permissible.

PAR. 2. Invalid miners may be elected to the general meeting and to the directorate of a miners' sick fund, even if they pay contributions to the sick fund as voluntary members.

## ARTICLE 502.

PARAGRAPH 1. Articles 368 to 376 are here applicable.

PAR. 2. In other cases, so far as this law does not provide otherwise, the provisions of State laws relating to miners' associations and miners' funds remain unaffected.

## SECTION TEN.—SUBSTITUTE FUNDS.

## I. AUTHORIZATION.

## ARTICLE 503.

PARAGRAPH 1. Mutual insurance associations to which a certificate as a registered aid fund according to article 75a of the sickness insurance law has been granted before April 1, 1909, shall on their application be admitted as substitute funds for the district and class of their members subject to insurance: *Provided*, That they have a permanent membership of more than 1,000 members, and that their constitution meets the requirements of articles 504 to 513.

PAR. 2. On application of such an insurance association the highest administrative authority of its seat may reduce the minimum membership to 250.



## ARTICLE 504.

PARAGRAPH 1. The admission of persons subject to insurance may be made dependent on participation in other societies or associations only if the constitution at the time of the establishment of the association contained such a provision applicable to all the members.

PAR. 2. In other respects members shall not be obliged to perform acts or to refrain from actions which do not affect the object of the association.

## ARTICLE 505.

PARAGRAPH 1. Persons subject to insurance who belong to the class of persons for whom according to its constitution the association was established shall, with reservation of article 504, paragraph 1, not be denied admission; in particular, admission shall not be made dependent on their age or state of health.

PAR. 2. The association may, however, subject those who apply for admission to a medical examination, and refuse the admission of persons who are sick at the time.

PAR. 3. The association may reject persons subject to insurance who apply for admission if they are in debt to the substitute fund for contributions from a former membership or if they have a claim to benefits from some other insurance which are at least equal to the benefits of their sick fund.

## ARTICLE 506.

PARAGRAPH 1. If not later than January 1, 1911, the association has graduated the contributions of persons subject to insurance, according to their age at the time of admission, then it may retain these grades and change them with the approval of its supervisory authority. But the highest grade must not exceed the lowest by more than was the case on the date specified, and at the most by one-half. The association may increase the contributions of persons subject to insurance according to their state of health at the time of admission, but such increase shall not be greater than one-fourth of the regular rate.

PAR. 2. The association shall not graduate its benefits according to the age or state of health of those who join.

## ARTICLE 507.

PARAGRAPH 1. The person subject to insurance shall be granted benefits at least equal to the regular benefits of the sick funds according to the basic wage which is the standard in his sick fund. The association may restrict persons subject to insurance to the lowest class of membership which meets these requirements.

PAR. 2. Benefits for persons subject to insurance may be reduced only to the same extent as in the case of the sick funds. The association must draw up sickness regulations (art. 347, par. 1) for them; the regulations must have the approval of the local insurance office competent for its seat.

PAR. 3. The association may increase the pecuniary benefit by one-fourth of the basic wage (par. 1) to persons subject to insurance who do not make use of the right of article 517, paragraph 1.

## ARTICLE 508.

The association may grant to its members and their dependents without restriction as to duration or amount all the benefits which sick funds of their kind are permitted to grant by article 179. The benefits to survivors of deceased members shall not exceed ten times the weekly benefit to which the deceased person was entitled.

## ARTICLE 509.

PARAGRAPH 1. The resources of the association may be used only for the benefits provided by the constitution, for the accumulation

of the reserve, for the costs of administration, and for the general purpose of the prevention of sickness.

PAR. 2. It is also permissible to use them for the attendance at meetings which shall serve the legal purposes of the sickness insurance and of the substitute funds.

PAR. 3. The association shall not collect contributions for other purposes from the persons subject to insurance.

PAR. 4. It may only undertake matters which the law relating to registered aid funds (Reichs-Gesetzblatt 1876, p. 125, and 1884, p. 54) permit, or which this book [book two] permits.

#### ARTICLE 510.

Only members who are of age and in possession of their civic rights may belong to the directorate or supervisory council.

#### ARTICLE 511.

After their admission the association may not exclude members or treat them less favorably in regard to contributions or benefits because they have passed a certain age limit or because their state of health has undergone a change.

#### ARTICLE 512.

Members who have belonged to it for two years shall not be excluded because they have resigned from a society or association, or are excluded therefrom. If it excludes a member before the expiration of two years for such a reason, it shall refund him not less than the entrance fee, if he has paid such.

#### ARTICLE 513.

The association may permit the resignation of persons subject to insurance only at the close of the calendar quarter, regardless of the fact that they may have changed their employment in the meantime.

#### ARTICLE 514.

PARAGRAPH 1. The superior administrative authority of its seat shall decide on the application of an association for authorization to act as a substitute fund. The Imperial Insurance Office shall decide in case its district extends beyond the borders of the federal State.

PAR. 2. If the application is approved, the association receives a certificate to that effect and it shall add to its name the words "substitute fund."

PAR. 3. The authorization may be refused only if the association does not meet the requirements of the provisions of articles 503 to 513. The reasons for refusal shall be stated.

#### ARTICLE 515.

PARAGRAPH 1. The certification of the superior administrative authority must be published by the newspaper designated for its official announcements and the certification of the Imperial Insurance Office by the Reichsanzeiger.

PAR. 2. As proof of authorization a printed copy of the constitution of the association may be used and it shall contain the certification, in addition to the year of publication, number, and page number, of the newspaper.

#### ARTICLE 516.

PARAGRAPH 1. If an authorized association does not meet, or no longer meets the conditions of authorization, and in spite of the request of its supervisory authority does not remedy this defect within the specified time limit which must be not less than six weeks, then the certification shall be revoked.

PAR. 2. It shall also be revoked if the association increases the group of persons subject to insurance who may belong to the association.

PAR. 3. The reasons for revocation shall be communicated. It shall be published in the same manner as the certification.

## II. RELATION TO SICK FUNDS.

### ARTICLE 517.

PARAGRAPH 1. In the case of persons subject to insurance who are members of a substitute fund, their rights and duties as members of that sick fund to which they belong shall be suspended if they apply therefor; they shall have no claim to benefits of the sick fund and shall neither hold office nor vote.

PAR. 2. Their employers have to pay only their own share of the contribution to the sick fund; the share of the insured person is not paid.

### ARTICLE 518.

PARAGRAPH 1. If the class from which the association recruits its members is composed principally of insured persons of the class specified in article 165, paragraph 1, Nos. 3 to 5, or of office employees, brick makers, or other insured persons, in whose occupations a frequent change of employment from one place to another is customary, the Imperial Insurance Office may, on application of this substitute fund, decree, with the right to revoke the decree, that the sick funds shall transmit to the substitute fund four-fifths of the shares of contributions paid to them according to article 517, paragraph 2, by the employers for its members.

PAR. 2. The Federal Council may specify the particulars herewith as well as in regard to the publication of the decree.

### ARTICLE 519.

PARAGRAPH 1. If a person subject to insurance intends to make use of the right of article 517, paragraph 1, he shall make application to the directorate at the time of admission to the sick fund, or at the latest on the second pay day; he shall communicate to it the name and seat of the substitute fund and prove that he belongs to it.

PAR. 2. On application of a substitute fund the federal council may confer on it the right to make applications in place of the persons subject to insurance.

PAR. 3. The sick fund shall give information to the employers of the person subject to insurance, only in regard to the question whether his rights and duties are suspended but not as to which substitute fund he belongs.

### ARTICLE 520.

PARAGRAPH 1. If the application has not been made at the proper time on admission to the sick fund, then it may be made not earlier than at the beginning of the next calendar quarter; it must be made to the directorate at least one month in advance; the admission to the substitute fund must also be proved to the directorate.

PAR. 2. The same is applicable to members of the sick fund who join only after admission to a substitute fund.

### ARTICLE 521.

PARAGRAPH 1. The substitute fund shall send a notice of the withdrawal of a member subject to insurance who has made use of the right of article 517, paragraph 1, to the directorate of its sick fund or to the common place of registration established for it, not later than at the close of the calendar quarter; it shall also send a notice within a month at the latest of the exclusion of such a member or

of his transfer to a class of membership entitled to lower benefits than those specified in article 507, paragraph 1.

PAR. 2. If the sick fund or the place of registration is unknown to the substitute fund, the notification shall be directed to the local insurance office in whose district the member was employed at the last payment of the contribution. This employment and the place where he is staying at that time shall be indicated. The local insurance office shall transmit the notification to the directorate of the proper sick funds.

#### ARTICLE 522.

PARAGRAPH 1. The constitution of the substitute fund shall specify which of its administrative bodies or employees shall make the notification and the applications which have been transferred to the fund according to article 519, paragraph 2.

#### ARTICLE 523.

If, in the case of a member of a substitute fund, the pecuniary benefit to which he would be entitled in his sick fund is increased so that the pecuniary benefit of the substitute fund for his membership class would no longer meet the requirements of article 507, paragraph 1, then his rights and duties according to article 517, paragraph 1, shall be suspended until the close of the calendar quarter, but for not less than two weeks.

#### ARTICLE 524.

The obligations of insurance carriers according to article 116, and of sick-fund directorates according to article 344, are also applicable to substitute funds.

#### ARTICLE 525.

The local insurance office shall decide by judgment procedure in disputes between substitute funds and sick funds over the refund of benefits granted illegally (art. 224, No. 2).

### SECTION ELEVEN.—FINAL PROVISIONS AND PENAL PROVISIONS.

#### I. FINAL PROVISIONS.

#### ARTICLE 526.

PARAGRAPH 1. A union of communes, in the meaning of this book, is a union whose district forms the district of the fund or embraces it as the next larger union.

PAR. 2. This highest administrative authority may specify in which cases the commune is competent in place of the union of communes: *Provided*, That the district of the fund does not extend beyond that of the commune.

PAR. 3. Where no union of communes exists, the State government shall specify which is competent.

#### ARTICLE 527.

PARAGRAPH 1. If a local, or rural sick fund has been created for several communes (independent manor districts, or marks, or march districts), <sup>1</sup> which together do not form a union of communes, they shall be combined according to particular provision of the State government into a union for special purposes (*Zweckverband*).

PAR. 2. The provisions of this book as to unions of communes are also applicable to such unions for special purposes.

#### ARTICLE 528.

If the district of a fund extends beyond the district of a local insurance office, then the local insurance office of its seat shall be competent for it.

<sup>1</sup>Selbständige Gutsbezirke oder Gemarkungen, ausmärkische Bezirke.

## II. PENAL PROVISIONS.

## ARTICLE 529.

PARAGRAPH 1. If an insured person violates the sickness regulations or the order of the attending physician, or neglects the notification incumbent on him according to article 190, then the directorate of the fund may impose upon him fines of not more than three times the amount of the daily pecuniary benefit for each case of contravention.

PAR. 2. The directorate of a miner's sick fund, and of a substitute fund, has the same authority as regards a member subject to insurance who violates the sickness regulation or the order of the attending physician.

PAR. 3. On appeal the local insurance office decides finally.

## ARTICLE 530.

PARAGRAPH 1. Whoever in violation of his obligations does not register persons subject to insurance (arts. 317, 319, and 468, par. 2), or does not submit the lists of employees engaged in home industries (art. 473), may be fined not to exceed 300 marks [\$71.40], if he acts intentionally, and not to exceed 100 marks [\$23.80] if he acts negligently.

PAR. 2. Whoever violates in other ways the provisions relating to the registration of persons liable to insurance or to the submission of lists or persons engaged in home industries (arts. 317 to 319, art. 468, par. 2, and arts. 473 and 474) may be fined not to exceed 20 marks [\$4.76].

PAR. 3. Whoever in violation of his obligation neglects to submit applications as required by article 519, paragraph 2, and article 522, or to make reports as required by article 521, may be fined not to exceed 20 marks [\$4.76].

PAR. 4. The local insurance office shall assess these fines. On appeal the superior insurance office decides finally.

## ARTICLE 531.

PARAGRAPH 1. The fund shall recover contributions which are in arrears independently of the fine.

PAR. 2. It may also require the persons fined to pay from one to five times the contributions which are in arrears. The amount shall be collected in the same manner as communal taxes. This is not applicable to persons engaged in home-working industries who violate article 468, paragraph 2.

PAR. 3. Article 396 is here correspondingly applicable.

## ARTICLE 532.

PARAGRAPH 1. Employers and persons giving the order (art. 486) shall be punished with a fine of not more than 300 marks [\$71.40], or be punished with arrest, unless a severer penalty is provided by other legal provisions if they intentionally do any of the following:

1. Deduct from the employees' earnings larger shares of contributions than this law permits, or make deductions in the case mentioned in article 398;
2. Violate the provisions of article 402.

PAR. 2. The same penalty shall be imposed on employers who act in contravention of the provisions of article 400.

## ARTICLE 533.

PARAGRAPH 1. Employers and persons giving the order (art. 486) shall be punished with confinement in jail if they intentionally keep back from the fund entitled thereto the shares of contributions which they have deducted from their employees or have received from them.

## 1314 WORKMEN'S COMPENSATION AND INSURANCE.

PAR. 2. They may in addition be fined not more than 3,000 marks [\$714] and be sentenced to the loss of their civic rights.

PAR. 3. If there are mitigating circumstances, then a fine only may be imposed.

### ARTICLE 534.

PARAGRAPH 1. The employer may transfer the obligations which this law imposes on him to establishment managers, persons charged with supervision, or other employees of his establishment.

PAR. 2. If such representatives act in contravention of this law, the penalty shall be imposed on them. In addition, the employer is also liable to punishment, if—

1. The contravention took place with his knowledge;
2. He has not observed the necessary care in the selection and supervision of his representatives; in this case only a pecuniary fine may be imposed on the employer.

PAR. 3. One to five times the contributions which are in arrears (art. 531, par. 2) may also be assessed on the representative and collected from him. Besides the representative the employer is also liable for this amount if he has been fined according to paragraph 2.

### ARTICLE 535.

The penal provisions of article 23, paragraph 2, are applicable to managing officials and employees of the funds and of the federations of funds; they are applicable to the employers in the case of establishment funds and to the persons appointed according to article 362, paragraph 1, if they intentionally commit acts which injure the fund.

### ARTICLE 536.

The same penal provisions (arts. 529 to 535) are applicable—

1. To the members of the directorate, if a stock company, a mutual insurance association, a registered cooperative society, a guild, or other legal person is the employer;
2. To the business manager if a society with limited liability is the employer;
3. To all partners personally liable, as far as they are not excluded from the representation, if any other business corporation is the employer;
4. To the legal representatives of insolvent and partially insolvent employers, as well as to the liquidators of a business corporation, a mutual insurance association, a registered cooperative society, a guild, or other legal person.

## BOOK THREE—ACCIDENT INSURANCE.

### PART I.

#### INDUSTRIAL ACCIDENT INSURANCE.

##### SECTION ONE.—SCOPE OF THE INSURANCE.

### ARTICLE 537.

PARAGRAPH 1. Subject to the insurance are—

1. Mines, salt works, ore-treating works, quarries, pits (open digging);
2. Factories, shipyards, metallurgical and metal working plants, pharmacies, and if they are conducted as a business, breweries and tanneries;
3. Yards for the preparation of building materials, establishments executing work in building, decorating, stone cutting, locksmithing, blacksmithing, or plumbing (*Brunnenarbeit*); furthermore stone-breaking establishments as well as building work done by other than regular building establishments;

4. The chimney-sweeping, window-cleaning, butchering trades, and the operation of bathing establishments;
5. The entire establishment of the railroad and the postal and telegraph administrations as well as the establishments of the naval and military administrations;
6. Inland navigation, rafting, flat-boating and ferries, the hauling of ships (towing), inland fishing, fish culture, the operation of ponds and the cutting of ice, if done as a business or administrated by the Empire, a State, a commune, a union of communes or other public body, dredging, as well as the keeping of vessels on inland waters;
7. Establishments engaged in hauling, express, livery, the hiring of riding animals and keeping of stables if carried on as a business, the keeping of vehicles other than water conveyances if driven by mechanical or animal power, as well as the keeping of riding animals;
8. Elevator, storage, and cellarage establishments if conducted as a business;
9. The trades of goods packer, goods loader, agent, sorter, weigher, measurer, inspector, stower;
10. Establishments for the transportation of persons or goods, and timber-felling establishments, if they are connected with a commercial undertaking which extends beyond the scope of a small-scale establishment;
11. Under the same assumption (number 10 preceding), establishments for the treatment and handling of goods.

**PAR. 2.** The Imperial Insurance Office decides which commercial undertakings (numbers 10 and 11) are not subject to the accident insurance on the ground that they are small-scale establishments.

#### ARTICLE 538.

Those establishments are considered as factories in the meaning of article 537, number 2, which—

1. Work up or work over articles as a business and for this purpose employ regularly at least 10 workmen;
2. Manufacture or work up as a business, explosives or explosive materials or produce or distribute electrical power;
3. Make use of steam boilers or of machinery moved by mechanical or animal power, provided that such use is not merely temporary;
4. Are placed in the category of factories by the Imperial Insurance Office.

#### ARTICLE 539.

Other establishments are also subject to the insurance if they are important parts or subsidiary establishments of the establishments described in articles 537 and 538.

#### ARTICLE 540.

Article 539 is not applicable—

1. To agricultural establishments which are subsidiary establishments.

The constitution (art. 675) may also place subsidiary establishments of this kind under the industrial accident insurance if the persons employed in them are principally persons from the main establishment. When such a provision comes into force, the subsidiary establishment is withdrawn from insurance in the agricultural accident association. The provision may only be canceled at the end of a fiscal year. Before a provision of the constitution on the membership of an agricultural subsidiary es-

tablishment is approved, the agricultural accident associations affected must be heard. If the accident associations do not come to an agreement, the Federal Council decides the matter upon application. The agreement of the agricultural accident association must in any case be secured, if the provision has not yet been in force more than three years;

2. To marine navigation establishments, and other establishments falling under articles 1046 and 1049, which are important parts of the establishments described in articles 537 and 538 and extend beyond the local traffic or are subsidiary establishments.

#### ARTICLE 541.

Articles 916, and 918 to 921, regulate what establishments and activities of the kind described in articles 537 and 538 as parts or subsidiary establishments of an agricultural establishment are to enter the agricultural instead of the industrial accident insurance.

#### ARTICLE 542.

PARAGRAPH 1. If, of several establishments which an undertaker has in the territory of the same superior insurance office, some are of the kind that belong to the industrial and some to the agricultural accident insurance, and if they do not already belong to the same accident association according to the preceding regulations, then, upon application of the employer, they are to be assigned to one accident association if altogether not more than 10 persons subject to the insurance are regularly employed in the establishments.

PAR. 2. The application is to be made to the superior insurance office, which, after a hearing of the accident associations affected, decides upon the assignment.

PAR. 3. The employer and the accident associations affected may appeal from the decision of the superior insurance office.

PAR. 4. Up to the time that the decision comes into force, the employer may withdraw the application.

PAR. 5. The assignment may be revoked only at the close of a fiscal year and as long as the grounds mentioned in paragraph 1 apply, only upon the application of the employer. If the assignment has not yet been in force for three years since the rendering of the final decision, then the revocation shall also require the consent of the accident associations affected.

#### ARTICLE 543.

PARAGRAPH 1. The Federal Council may exempt from the insurance establishments having no particular accident risk.

PAR. 2. The Imperial Insurance Office prepares the decision of the Federal Council; in this connection the decision senate must render an opinion.

#### ARTICLE 544.

PARAGRAPH 1. The following are insured against accident in establishments or activities which are subject to the insurance according to articles 537 to 542 (industrial accidents): *Provided*, That these two groups are employed in these establishments or activities:

1. Workmen, helpers, journeymen, apprentices;
2. Establishment officials whose annual earnings do not exceed 5,000 marks [\$1,190] of income.

PAR. 2. Acts which have been forbidden do not exclude the assumption of an industrial accident.

#### ARTICLE 545.

Foremen and technical officials are also to be considered as establishment officials.



## ARTICLE 546.

The insurance covers household and similar service to which insured persons, who are principally employed in an establishment or in insured activities, are assigned by the undertaker or his representative.

## ARTICLE 547.

By decision of the Federal Council the accident insurance can be extended to specified occupational diseases in industries. The Federal Council is authorized to issue special regulations for the administration thereof.

## ARTICLE 548.

The constitution may extend the compulsory insurance—

1. To undertakers of establishments whose annual earnings do not exceed 3,000 marks [\$714], or who regularly employ for compensation either no one or at the most two persons subject to insurance;
2. To persons engaged in home-working industries (art. 162) without regard to the number of persons subject to insurance employed, who are the undertakers of an establishment described in articles 537 and 538;
3. To establishment officials whose annual earnings exceed 5,000 marks [\$1,190] of compensation.

## ARTICLE 549.

PARAGRAPH 1. The directorate of the accident association may declare exempt from the insurance those undertakers who, according to the constitution, are subject to the compulsory insurance (art. 548, number 1) but are exposed to no special accident risk. The directorate shall revoke the exemption whenever the reasons therefor no longer exist.

PAR. 2. On appeal, the superior insurance office decides finally.

## ARTICLE 550.

PARAGRAPH 1. Undertakers (art. 633) as well as pilots on inland waters, who conduct their business for their own account, may insure themselves against the results of industrial accidents if they do not have annual earnings of more than 3,000 marks [\$714], or if they regularly employ for compensation either no one, or at the most two persons subject to insurance.

PAR. 2. The constitution may also admit them to self-insurance, if they have annual earnings of more than 3,000 marks [\$714], or regularly employ for compensation at least three persons subject to insurance.

## ARTICLE 551.

The provisions of article 548, Nos. 1 and 2, and of article 550, on the insurance of employers, apply also to their wives or husbands engaged in the establishment.

## ARTICLE 552.

The constitution may provide under what conditions accidents of the kind described in articles 544 and 546 may be insured against:

1. By the undertaker of the establishment, on behalf of persons who are employed in the establishment, but are not insured according to articles 544, 545, and 548, No. 3;
2. By the undertaker of the establishment, or the directorate of the accident association, on behalf of persons who are not employed in the establishment but who visit the working place of the establishment or move about therein;
3. By the directorate of the accident association, the members of their official bodies, and their employees.

## 1318 WORKMEN'S COMPENSATION AND INSURANCE.

### ARTICLE 553.

The constitution may provide that the voluntary insurance shall be out of force if the contribution has not been paid in spite of warning, and that a new application shall remain of no effect until the arrears of contributions have been paid.

### ARTICLE 554.

PARAGRAPH 1. Exempt from the insurance are—

1. Army and Navy officers and surgeons to whom the officers' pension law (Reichs-Gesetzblatt, 1906, p. 565) is applicable;
2. Military persons of the lower classes to whom the noncommissioned officers' and privates' (*Mannschaft*) provision law (Reichs-Gesetzblatt, 1906, p. 593) is applicable;
3. The other persons describe, by article 1 of the accident relief law for officials, etc., of June 18, 1901 (Reichs-Gesetzblatt, p. 211);
4. Officials who have been appointed at a fixed salary and with a claim to retirement pension in the establishments of the administration of a federal State, of a union of communes, or of a commune;
5. Other officials of a federal State, of a union of communes, or of a commune if relief for them has been provided according to articles 14 of the above-mentioned accident relief law.

PAR. 2. Building operations outside of a building establishment conducted as a business, as well as the keeping of riding animals or conveyances not conducted as a business (art. 537, Nos. 6 and 7), are considered as establishments in the meaning of the accident relief law.

## SECTION TWO.—BENEFITS OF THE INSURANCE.

### ARTICLE 555.

The object of the insurance is the compensation specified in the following provisions for the damage arising from bodily injury or death.

### ARTICLE 556.

The injured person and his survivors have no claim if they have purposely brought about the accident.

### ARTICLE 557.

PARAGRAPH 1. If the injured person has brought the accident upon himself by the performance of an act which according to a verdict of the court is a crime or an intentional misdemeanor, then the compensation for damages may be wholly or partly denied.

PAR. 2. Contravention of mining regulations shall not be considered a misdemeanor in the meaning of the preceding paragraph.

PAR. 3. The pension may be either wholly or partly paid to the injured person's dependents living in the Empire, if in case of his death they would have a claim to a pension. German protectorates are to be included in the Empire in the meaning of this provision.

PAR. 4. The compensation may also be denied if no verdict of a court has been rendered because of the death or the absence or of any other reason connected with the person of the injured party.

### ARTICLE 558.

In case of an injury, there is to be granted from the beginning of the fourteenth week after the accident—

1. Medical treatment; it includes physician's services and the providing of medicines, other therapeutical appliances as well as the aids which are requisite to assure the success

of the treatment or to alleviate the results of the injury (crutches, supporting apparatus, and the like);

2. A pension during the continuance of the disablement.

#### ARTICLE 559.

The amount of the pension is as follows, as long as the injured person as a result of the accident is—

1. Totally disabled, two-thirds of the annual earnings computed according to articles 563 to 570 (full pension);
2. Partially disabled, that part of the full pension which corresponds to the proportion of the loss of earning power (partial pension).

#### ARTICLE 560.

As long as the injured person is, as a result of the accident, so helpless that he can not exist without the services and care of others, the pension is to be correspondingly increased, though not to more than the full amount of his annual earnings.

#### ARTICLE 561.

PARAGRAPH 1. If the injured person at the time of the accident was already permanently and totally disabled, then only medical treatment (art. 558, No. 1) is to be granted.

PAR. 2. As long as in consequence of the accident he is so helpless that he can not exist without the services and care of others, a pension not greater than one-half of the full pension is to be granted.

#### ARTICLE 562.

As long as the injured person as a result of the accident is unemployed through no fault of his own, the accident association may for a time raise the partial pension to not more than a full pension.

#### ARTICLE 563.

PARAGRAPH 1. The pension shall be computed according to the compensation which the injured person had drawn during the last year in the establishment (annual earnings).

PAR. 2. In so far as the annual earnings exceed 1,800 marks [\$428.40], the excess shall be reckoned at only one-third.

#### ARTICLE 564.

PARAGRAPH 1. If the injured person had been employed in the establishment a full year before the accident, the annual earnings shall be considered as 300 times the average earnings for a full working day, subject to the provisions of article 569.

PAR. 2. If it is shown that it was customary to operate for a greater or a smaller number of working days, then the multiplication shall be made with this number instead of 300.

#### ARTICLE 565.

If the injured person had not yet been employed in the establishment a full year before the accident, then the annual earnings shall be computed in such a manner that the number of days on which the injured person was employed in the establishment shall be multiplied by the average earnings for a full working day; for the rest of the customary number of working days of operation of the year there shall be added the average earnings which, during this time, insured persons of the same kind and earning capacity in the establishment or in a neighboring establishment have secured for a full working day.

#### ARTICLE 566.

If the computation according to article 565 can not be carried out, then the annual earnings shall be computed by multiplying the customary number of working days of operation in the year with the compensation which the injured person during the employment in the establishment received on an average for a full working day.

## ARTICLE 567.

If the customary number of working days of operation in the year is so small that those employed in the establishment regularly perform work elsewhere for compensation in addition, then in the cases specified in articles 565 and 566, the number of working days necessary to make up the 300 shall be added to the amount computed according to articles 565 or 566, using the local wages for adults over 21 years of age which at the time of the accident have been determined for the place of employment of the injured person (arts. 149 to 152).

## ARTICLE 568.

If the injured person had been employed by the hour, then the average earnings for the full working day may not be placed higher than the average earnings for a workman of the same kind who has been employed during the whole working day.

## ARTICLE 569.

Articles 564 to 568 are to be correspondingly applied if the annual earnings are composed of amounts specified for not less than weekly periods.

## ARTICLE 570.

If the annual earnings do not equal 300 times the local wages for adults over 21 years (art. 567), then 300 times this wage shall be considered as the annual earnings.

## ARTICLE 571.

In the case of persons who, previous to the accident, were already partially and permanently disabled, that part of the local wages shall be used as a basis which corresponds to the proportion of earning capacity before the accident.

## ARTICLE 572.

Articles 563 to 571 apply correspondingly to injured persons who were employed in an insured activity without belonging to an insured establishment.

## ARTICLE 573.

PARAGRAPH 1. If the insured person is insured against sickness on the basis of the imperial insurance or in a miners' sick fund, he shall be granted at least the regular sick-fund benefits of medical treatment and pecuniary benefit according to article 179. However, the pecuniary benefit from the beginning of the fifth week after the accident until the expiration of the thirteenth week shall amount to at least two-thirds of the basic wage. This may not be refused, even in the case mentioned in article 192, unless the injured person has brought the accident on himself during the commission of a crime or during an intentional misdemeanor (art. 557, pars. 1 and 2). The corresponding rule applies to the house money.

PAR. 2. If an insured person receives at the same time pecuniary sick benefits from another insurance, then the reduction of the pecuniary benefit described in paragraph 1 shall be made according to article 189.

PAR. 3. For members of substitute funds the basic wage of their sick fund, while for members of miners' sick funds the basic wage as specified in article 180, shall be determinative.

PAR. 4. If the person insured against sickness becomes ill as the result of an accident while in a foreign country, then the provisions of articles 221 and 222 are applicable in a corresponding manner.

## ARTICLE 574.

Those persons are to be considered as insured against sickness in the meaning of article 573 who:

1. Are exempt from the insurance according to articles 418 and

435, in so far as the sick fund has to make provision for them (art. 422);

2. On account of lack of employment have separated from the sick fund, but still have a claim on the fund (art. 214).

#### ARTICLE 575.

If in the case of persons subject to the agricultural sickness insurance the pecuniary sick benefit or the house money is not to be paid, or to be paid only in part because according to articles 420, 421, and 425 there are contractual benefits to be paid by the employer, or because according to article 423 the person is in receipt of a pension on the basis of the imperial insurance, then the value of such benefits is to be included in the sick relief specified in article 573 in so far as they are payable during the same time.

#### ARTICLE 576.

PARAGRAPH 1. Whatever must be granted by the sick funds, the miners' sick funds, or the substitute funds according to articles 573 and 575, in addition to the minimum benefits which must otherwise be provided according to the law or the constitution, must be repaid by the accident association, or in other cases by the undertaker (art. 633), whenever a compensation must be paid to the injured person beyond the thirteenth week. The constitution of the accident association can specify that the latter in all cases must reimburse the additional benefits.

PAR. 2. The same holds true in a corresponding manner if the injured person who is insured against sickness has no claim to sick benefits.

#### ARTICLE 577.

PARAGRAPH 1. If an injured person belongs to the group of insured persons according to articles 544 and 545, but is not insured against sickness on the basis of the imperial insurance or in a miners' fund, then the undertaker, under reservation of paragraphs 2 and 3, must grant him the sick benefits during the first 13 weeks. For the amount of the benefits and for their reimbursement articles 573 to 576 are applicable. With the consent of the injured person the undertaker can also grant care and maintenance according to article 185, paragraph 1, and for this deduct not more than one-fourth of the pecuniary sick benefit. As the basic wage for this purpose, the local wage for the place of employment (arts. 159 to 152) shall be used. These provisions shall apply in the case of establishment officials only if their annual earnings do not exceed 2,500 marks [\$595].

PAR. 2. In the cases mentioned in articles 169, 418, and 435, the employer has to provide the injured person for the first 13 weeks with the benefits specified in paragraph 1. In such case that basic wage shall be used which is determinative for the sick fund. In these benefits those mentioned in articles 169, 418, and 435 shall be included. Anything in excess of this must be repaid to the employer by the accident association or by the undertaker (art. 576). The same holds true in the case mentioned in articles 170 and 171 if the claims arising out of article 169 are provided to the persons mentioned in those articles.

PAR. 3. If a domestic servant is exempt from the insurance because of other relief specified in article 440, paragraph 1, then the provisions of paragraph 2, sentences 1 to 4, apply to him in a corresponding manner, though the carrier providing the other relief takes the place of the employer. The carrier providing the other relief must claim reimbursement for the additional benefits from the undertaker if the accident association is not obliged to make the repayment.

## ARTICLE 578.

The details for the carrying out of articles 573 to 577 are to be specified by the Imperial Insurance Office.

## ARTICLE 579.

PARAGRAPH 1. The accident association may take over either wholly or in part the benefits to be paid by the undertaker. The latter must reimburse the association to the extent to which the injured person could claim sick benefits from him and in so far as the association itself would not be obliged to make repayment. In such case the reimbursement for sick care shall be three-eighths of the basic wage according to which the pecuniary sick benefit of the beneficiary is to be computed.

PAR. 2. This shall be correspondingly applicable if, in the cases mentioned in article 577, paragraphs 2 and 3, the employer or the carrier of other relief takes the place of the undertaker.

## ARTICLE 580.

PARAGRAPH 1. If in the case of injured persons to whom articles 573 to 577 do not apply it is to be feared that they must later be provided with accident compensation, the accident association may inaugurate a course of treatment, even before the end of the thirteenth week after the accident, for the purpose of removing or alleviating the results of the injury.

PAR. 2. The accident association can place the injured person in a medical institution; in such case article 597, paragraphs 2 to 4, is applicable.

PAR. 3. With the consent of the injured person the association can grant care and maintenance as specified in article 185, paragraph 1.

PAR. 4. The injured person may claim from the accident association an appropriate recompense for the earnings he loses on account of the course of treatment.

## ARTICLE 581.

PARAGRAPH 1. Within the first 13 weeks after the accident, the accident association may also have a medical examination made of the injured person even if it does not grant a course of treatment, and can also call for information concerning the treatment and the condition of the injured person from the sick fund, the miners' sick fund, the substitute fund, the physician in charge, or in the cases mentioned in article 577, from the undertaker.

PAR. 2. On application of the accident association, the local insurance office may compel the undertaker to provide this information within a specified time on penalty of fines not exceeding 100 marks [\$23.80].

PAR. 3. Appeals from the determination of the fines shall be decided finally by the superior insurance office.

## ARTICLE 582.

PARAGRAPH 1. If the pecuniary sick benefit ceases before the expiration of the 13 weeks, but the disability continues after the payment ceases, then the pension must be granted from the day on which the pecuniary sick benefit ceases.

PAR. 2. The constitution may also permit the payment of the pension even if after the payment of the pecuniary sick benefit ceases, a loss of earning power remains, but will apparently end before the expiration of the 13 weeks.

## ARTICLE 583.

PARAGRAPH 1. If the sick fund, miners' sick fund or substitute fund has improperly stopped the payment of its benefits before the expiration of the 13 weeks, then the claim of the injured person to

the pecuniary sick benefit up to the amount of the pension (art. 582) is transferred to the accident association.

PAR. 2. The same rule is applicable in the case of the benefits paid by the undertaker (art. 577).

#### ARTICLE 584.

If the accident association, during the time it was required according to article 558 to furnish compensation, has not provided benefits for the injured person, and if during this time, the sick fund, the miners' sick fund, or the substitute fund has granted pecuniary sick benefits or care and maintenance in a hospital according to articles 182, 184, and 185, then the injured person shall be considered as having been totally disabled during this time.

#### ARTICLE 585.

Controversies concerning claims for reimbursement arising out of articles 573 to 577, and article 579, shall be decided by judgment procedure (*Spruchverfahren*).

#### ARTICLE 586.

PARAGRAPH 1. In fatal cases there must in addition be granted—

1. As a funeral benefit, the fifteenth part of the annual earnings; however, this must not be less than 50 marks [\$11.90]; article 203 is applicable in a corresponding manner;
2. A pension to the survivors from the date of the death; it consists of a fraction of the annual earnings according to the provisions of articles 588 to 595.

PAR. 2. The annual earnings shall be computed in the same manner as in the case of bodily injury; however, article 571 does not apply in this connection.

#### ARTICLE 587.

If because of an earlier accident this rate of annual earnings is smaller than that received by him previously, then the earlier pension is to be included in the annual earnings; in such case, however, that amount may not be exceeded which as annual earnings was used as the basis of the earlier pension.

#### ARTICLE 588.

If the deceased leaves a widow or children, the pension shall amount to one-fifth of the annual earnings—

For the widow up to the time of her death or remarriage;

For each child up to the completed fifteenth year of age; for an illegitimate child, however, only in so far as the deceased has provided him with maintenance according to legal obligation.

#### ARTICLE 589.

If the widow remarries, she receives three-fifths of the annual earnings as a settlement.

#### ARTICLE 590.

PARAGRAPH 1. The widow has no claim if the marriage has taken place only after the accident.

PAR. 2. The accident association may, however, under special circumstances, even then grant a widow's pension.

#### ARTICLE 591.

PARAGRAPH 1. The provisions concerning pensions of children shall apply also for children of a female person who is not a married woman.

PAR. 2. The same holds true for children of a married woman born before marriage, or for her children of an earlier marriage, if they do not have the legal status of lawful children of the surviving husband.

## ARTICLE 592.

PARAGRAPH 1. In case a married woman is killed, who on account of the disability of the husband had supported her family either wholly or in part out of her own earnings, for the duration of the need there is to be granted a pension equal to one-fifth of the annual earnings—

To the widower up to the time of his death or remarriage;

To each child up to the completed fifteenth year of age.

PAR. 2. The widower has no claim if the marriage has taken place after the accident.

PAR. 3. If the husband of the deceased person, without legal grounds therefor has absented himself from the household and has not fulfilled his obligations of maintenance toward the children, then the accident association may grant the pension to the latter.

## ARTICLE 593.

PARAGRAPH 1. If the deceased has left relatives in the ascending line whom he has supported to an important degree out of his earnings, then for the duration of the need a pension is to be granted to them, which together shall be one-fifth of the annual earnings.

PAR. 2. If there are relatives of different degree in the ascending line, then the pension shall be approved for the parents in preference to the grandparents.

## ARTICLE 594.

If the deceased leaves orphan grandchildren whom he has wholly or partly supported out of his earnings, then for the duration of the need there shall be granted to them, up to the completed fifteenth year of each, a pension equal altogether to one-fifth of the annual earnings.

## ARTICLE 595.

PARAGRAPH 1. The pensions of the survivors may not together exceed three-fifths of the annual earnings; in the contrary case they shall be decreased, and in the following manner: In the case of consorts or children in the same degree; relatives of the ascending line have a claim only in so far as consorts or children, and grandchildren only in so far as those named first do not exhaust the highest amount named.

PAR. 2. In case one survivor ceases to have a right to a pension, the pensions of the others are to be increased to the highest permissible amount.

## ARTICLE 596.

PARAGRAPH 1. The survivors of a foreigner, if such survivors at the time of the accident do not customarily reside in Germany, have no claim to a pension.

PAR. 2. The Federal Council can exclude from this provision foreign border territories or subjects of such foreign States the legislation of which provides a corresponding relief for the survivors of Germans killed by an industrial accident.

PAR. 3. German protectorates are considered as German territory in the meaning of paragraph 1.

## ARTICLE 597.

PARAGRAPH 1. In place of the benefits prescribed in article 558 the accident association may grant free medical treatment and maintenance in a medical institution (medical-institution care).

PAR. 2. If the injured person has a household of his own, or is a member of the household of his family, then his consent thereto is necessary.

PAR. 3. In the case of a minor over 16 years of age his consent is sufficient.



PAR. 4. The consent is not necessary if—

1. The nature of the injury requires treatment or care which is not possible in the family of the injured person;
2. The sickness is infectious;
3. The injured person has repeatedly acted contrary to the directions of the attending physician;
4. The condition or conduct of the injured person makes continuous observation necessary.

PAR. 5. In the cases mentioned in paragraph 4, numbers 1, 2, and 4, the accident association shall, if possible, provide treatment in a medical institution.

#### ARTICLE 598.

If the accident association provides treatment in a medical institution after the first 13 weeks, or on account of the cessation of the pecuniary sick benefit before that time, then a pension must be granted to the relatives of the injured person in so far as it would be granted in case of his death (relative's pension). This claim is also possessed by the wife whose marriage with the injured person has taken place after the accident.

#### ARTICLE 599.

With the consent of the injured person the accident association may grant care and attendance by sick nurses, nursing sisters, or other nurses (house care—*Hauspflege*), especially when the placing of the injured person in a medical institution is indicated, but may not be carried out, or an important reason exists for leaving the injured person in his household or in his family.

#### ARTICLE 600.

PARAGRAPH 1. If the accident association assumes the payment of the benefits of the undertaker according to article 579, then in place of the sick care and of the pecuniary sick benefit, it may provide hospital care and house money according to articles 184, 186, and 577, paragraph 1; with the consent of the injured person the accident association may also grant care according to article 185, paragraph 1, but in such case shall deduct not more than one-fourth of the pecuniary sick benefit.

PAR. 2. The undertaker must reimburse the accident association to the extent to which the injured person could claim sick benefits from him and in so far as the association itself would not be obliged to make repayment. In such case the reimbursement for the sick care shall be three-eighths of the basic wage according to which the pecuniary sick benefit of the beneficiary is to be computed.

PAR. 3. The same holds true in a corresponding way if in the cases mentioned in article 577, paragraphs 2 and 3, the employer or the carrier of other relief takes the place of the undertaker.

#### ARTICLE 601.

Controversies concerning claims for reimbursement arising out of article 600 shall be decided in judgment procedure (*Spruchverfahren*).

#### ARTICLE 602.

The accident association may by its constitution grant special relief to the injured person who is placed in a medical institution (*Heilanstalt*) and to his dependents either by general rules or according to the need of the parties.

#### ARTICLE 603.

The accident association may at any time inaugurate a new course of treatment if it may be expected that such would increase the earning capacity of the accident pensioner.

## ARTICLE 604.

In addition to the injured person, the sick fund, the miners' sick fund, or the substitute fund to which he belongs, may apply for the resumption of the medical treatment.

## ARTICLE 605.

PARAGRAPH 1. If the sick funds, the miners' sick funds, the substitute funds, or the carriers of the accident insurance have placed an injured person in an institution possessing adequate arrangements for treatment, then the injured person during the course of treatment may not be placed in another institution without his consent.

PAR. 2. The local insurance office of the place where he is staying may grant the consent instead.

## ARTICLE 606.

If the injured person has not complied with a regulation which affects the medical treatment without any legal or other appropriate reasons therefor, and if his earning capacity will thereby be unfavorably influenced, then his compensation may be disallowed for the time being, either wholly or partly, after this result has been pointed out to him.

## ARTICLE 607.

PARAGRAPH 1. On application the directorate of the accident association may grant to the person receiving pension maintenance in a home for invalids (*Invalidenhaus*), an orphan asylum (*Waisenhaus*), or a similar institution, in place of the pension.

PAR. 2. Such institutions are considered as hospitals, homes, and sanatoria, in the meaning of article 11, paragraph 2, and of article 23, paragraph 2, of the law on relief residence (*Reichs-Gesetzblatt*, 1908, p. 381).

PAR. 3. So placing the receiver of a pension obligates him to a release of his pension for a period of three months and if he does not protest within one month before the expiration of this period, to a further period of three months.

## ARTICLE 608.

If an important change takes place in the conditions which were of importance in the determination of the compensation, then a new determination may be made.

## ARTICLE 609.

During the first two years after the accident a new determination on account of a change in the condition of the injured person may be undertaken or demanded at any time. If, however, within this time limit a permanent pension has been legally determined, or if this time limit has expired, then a new determination may be undertaken or demanded only in periods of at least one year. These periods are not affected by the inauguration of a new course of treatment. The periods may be shortened by mutual agreement.

## ARTICLE 610.

The decision, or the final decision, which decreases or withdraws the pension will become effective with the expiration of the month following its announcement.

## ARTICLE 611.

The increasing or regranteeing of the pension may be claimed only for the time after the registry of the claim therefor.

## ARTICLE 612.

PARAGRAPH 1. The cost of the medical treatment and funeral benefits are to be paid within one week after their determination, while pensions are to be paid in monthly amounts in advance. If the pen-

sion amounts to 60 marks [\$14.28] or less, then it is to be paid in quarterly amounts in advance: *Provided*, That it is not probable that it will cease to be paid before the expiration of the quarter.

PAR. 2. With the consent of the person entitled to the pension the accident association may pay the same at longer intervals of time.

PAR. 3. The pension shall be rounded off in amounts of full 5 pfennigs [1.2 cents] for the month or the quarter.

#### ARTICLE 613.

PARAGRAPH 1. The pension shall be paid for the rest of the month in which the death occurred, in which the remarriage occurred, and in which the pension was suspended. In cases where in addition to the part of the month on account of the pension of the injured person there is also a pension of the survivors, then the latter shall have a claim to the higher amount.

PAR. 2. If the pension is to be paid for a longer period of time, the accident association may pay the pension for this period also.

#### ARTICLE 614.

If the person entitled to compensation has not received it at the time of his death, then the wife or husband, the children, the father, the mother, the brothers and sisters are entitled to it in order: *Provided*, That they have lived with the person entitled to the pension at the time of his death in the same household.

#### ARTICLE 615.

PARAGRAPH 1. The pension shall be suspended—

1. As long as the beneficiary is serving a prison term of more than one month or has been placed in a workhouse or reformatory.

If he has dependents in Germany who in case of his death would have a claim to a pension, then the pension up to the amount of his claim shall be turned over to them.

2. So long as a person who is a German subject remains in a foreign country and neglects:

To inform the accident association of his whereabouts;

As an injured person, on the demand of the accident association, to present himself from time to time to the competent consul or other German authorities designated by him.

The Imperial Insurance Office shall specify the particulars in regard to communicating and presentation.

If the person entitled to pension proves that he has neglected to make the prescribed communication and presentation without any fault of his own, then the right to the pension shall be resumed again.

3. As long as the foreign beneficiary voluntarily resides in a foreign country;
4. As long as a foreign beneficiary is expelled from the territory of the Empire on account of a condemnation in a criminal process. The same applies to a foreign beneficiary who has been expelled from the territory of one of the federal States on account of a condemnation in a penal procedure, so long as he does not stay in another federal State.

PAR. 2. In the cases mentioned in numbers 3 and 4, the Federal Council may suspend the cessation of a pension for foreign border territories, or for the subjects of such foreign States whose legislation guarantees a corresponding relief to Germans and their survivors.

**PAR. 3.** If the expulsion of a foreigner entitled to a pension (par. 1, No. 4) is not directed by a condemnation, or on account of a condemnation in a penal procedure, then paragraph 1, No. 2, shall be applicable.

**PAR. 4.** German protectorates shall be regarded as German territory in the meaning of these provisions.

#### ARTICLE 616.

If the pension of an injured person amounts to one-fifth of a full pension or less, then the accident association, with his approval and after a hearing by the local insurance office, may settle upon him a capital sum corresponding to the value of his annual pension.

#### ARTICLE 617.

**PARAGRAPH 1.** A foreigner entitled to a pension who gives up his customary abode in Germany, or who resides customarily in a foreign country, can with his consent receive a settlement from the accident association equal to three times the amount of his annual pension, and without his consent may be paid a capital sum corresponding to the value of his annual pension.

**PAR. 2.** The Federal Council may nullify this provision for foreign border territories.

#### ARTICLE 618.

In cases of settlement with a corresponding capital sum (arts. 616 and 617), the Federal Council shall regulate the computation of the value of the capital sums.

#### ARTICLE 619.

If on a new investigation the accident association becomes convinced that the benefits were incorrectly disallowed, either wholly or partly, or have been withdrawn or suspended incorrectly, it may determine these anew.

#### ARTICLE 620.

The accident association does not need to demand the return of the compensation which it had to pay before a legal decision came into force.

#### ARTICLE 621.

With the exception of the cases mentioned in article 119, claims for compensation may be transferred, assigned, and pledged with legal effect, also on account of demands of the sick funds, miners' associations, miners' funds, substitute funds, and insurance institutions which are entitled to reimbursement according to articles 1501, 1522, and 1528. The transfer, assignment, and execution is only permissible to the amount of the legal claims for reimbursement.

#### ARTICLE 622.

Claims may be reduced only by the following:

- Arrears of contributions;
- Advances made out of the assets of the accident association;
- Compensation which was paid incorrectly;
- Costs of procedure which are to be returned;
- Fines which have been imposed by the directorate of the accident association;
- Claims for reimbursement of the accident association according to articles 903 and 904.

### SECTION THREE.—CARRIERS OF THE INSURANCE.

#### I. THE ACCIDENT ASSOCIATIONS AND OTHER CARRIERS OF THE INSURANCE.

#### ARTICLE 623.

As carriers of the insurance, the accident associations comprise the undertakers of the insured establishments (art. 633, par. 1).

## ARTICLE 624.

The Empire or the federal State is the carrier of the insurance if the establishment is conducted for its account in the two cases mentioned below, which also include building work and activities in connection with the keeping of riding animals or conveyances not managed as a business (art. 537, Nos. 6 and 7). These two cases are—

1. In the case of the administration of the postal service, the telegraph service, the navy, and the army;
2. In the case of the railways.

## ARTICLE 625.

PARAGRAPH 1. The Empire or the federal State is the carrier of the insurance if the establishment is conducted for its account in the case of establishments for dredging, inland navigation, rafting, flatboating, and ferrying, unless the establishments, according to article 2, paragraph 2, of the law of May 28, 1885 (Reichs-Gesetzblatt, p. 159), belong to the accident associations created for them.

PAR. 2. The later entrance of such establishments into an accident association, or the rewithdrawal, or the re-entrance, in case the accident association does not agree thereto, is permissible only with the approval of the Federal Council, and in the absence of other agreement only at the close of a fiscal year.

PAR. 3. In case of rewithdrawal the Empire or the federal State must from then on satisfy the claims for compensation which exist against the accident association on account of accidents in the establishment which has withdrawn, and in this connection an appropriate portion of the reserve and of other assets of the accident association must be turned over to the Empire or to the federal State. The latter are then required to assume the payment of an appropriate part of the interest and refunding payments for the floating debt (art. 779).

PAR. 4. The accident association and the Empire or the federal State may by mutual agreement act in variance of the provisions of paragraph 3; in such cases the decision of the general meeting of the accident association is required.

PAR. 5. If controversies arise in regard to distributing the assets between the accident association and the Empire or the federal State, they may settle the question by an arbitration decision; otherwise it shall be decided by the Imperial Insurance Office (decision senate).

## ARTICLE 626.

In so far as the Empire, a federal State, a public union or other corporation, has the sole right through law or treaty to engage in inland navigation on a waterway or a part thereof (towing and the like), these establishments belong to the accident association created for them.

## ARTICLE 627.

PARAGRAPH 1. The Empire or the federal State is the carrier of the insurance for operations other than the building work and activities in connection with the keeping of riding animals or conveyances not conducted as a business according to article 624 (art. 537, Nos. 6 and 7): *Provided*, That these other building operations or activities are conducted for its account. This does not apply, whenever the Empire or the federal State through a declaration of the imperial chancellor or of the highest administrative officials enter into the accident association, which is the proper one for building-trades operations or for the undertakers of establishments engaged in hauling, or in inland navigation, as a business. The declaration of entrance shall also specify the date on which the entrance becomes effective.

PAR. 2. The rewithdrawal and the reentrance is permissible if the accident association does not agree thereto, only with the approval of the Federal Council, and in the absence of other agreement only at the close of a fiscal year.

PAR. 3. In the case of a rewithdrawal, article 625, paragraphs 3 to 5, is applicable in a corresponding manner.

#### ARTICLE 628.

PARAGRAPH 1. A commune, a union of communes, or another public corporation is the carrier of the insurance for such building work and activities in connection with the keeping of riding animals or other conveyances not conducted as a business (art. 537, Nos. 6 and 7) which it conducts as an employer in establishments other than railways: *Provided*, That the highest administrative authorities, on application, have declared the corporation able to assume the burden. Otherwise such a corporation shall be insured together with the designated operations and activities according to article 629.

PAR. 2. The highest administrative authority may unite several communes, unions of communes, or other public corporations into a federation for the common carrying out of the insurance and declare the latter to be capable of carrying the burden.

PAR. 3. A commune, a union of communes, or another public corporation, may through a declaration of its directorate enter into the competent accident association (art. 627, par. 1). The declaration of entrance shall also specify the date on which the entrance becomes effective.

PAR. 4. If such a corporation is declared to be unable to carry the burden, then its rewithdrawal from the accident association and its reentrance, in the absence of other agreement, is permissible only at the close of a fiscal year. If it is declared capable of carrying the burden, then article 627, paragraph 2, is applicable for its rewithdrawal from the accident association and its reentrance; for its rewithdrawal article 625, paragraphs 3 to 5, is also correspondingly applicable.

#### ARTICLE 629.

PARAGRAPH 1. Building work which other undertakers do not carry out as a business shall be insured at the expense of the undertakers, or of the communes, or of the unions, through special institutions (branch institutes) which shall be attached to the accident associations of the building trades employers (arts. 783 to 835). The accident association is the carrier of the branch institute.

PAR. 2. In the same way branch institutes (arts. 836 to 842) shall be attached to the accident associations of the undertakers of establishments engaged in hauling and inland navigation as a business for the insurance of activities connected with the keeping of riding animals or other conveyances not conducted as a business (art. 537, Nos. 6 and 7). The Federal Council can attach the branch institutes or parts of them, to other accident associations. In place of the branch institutes or parts of them, the Federal Council may create mutual insurance association as independent insurance carriers, and in such case regulates their organization. In case the Federal Council herewith alters the status of branch institutes or of mutual insurance associations it shall regulate the transfer of the burden of accidents and of the assets.

### II. COMPOSITION OF THE ACCIDENT ASSOCIATIONS.

#### ARTICLE 630.

PARAGRAPH 1. The accident associations shall be created according to geographical districts; they include all establishments of the

branch of industry for which they were created. In the case of accident associations for railways or the establishments designated in article 537, Nos. 6 and 7, this provision may be departed from.

PAR. 2. The Federal Council may approve the uniting of the undertakers of establishments which belong to miners' associations, or to miners' funds, into miners' accident associations.

PAR. 3. Those accident associations which have been created in accordance with earlier accident insurance laws retain their former status under reservation of the changes permitted according to articles 635 to 648.

#### ARTICLE 631.

PARAGRAPH 1. If the establishment includes important parts of industries of different kinds, it is to be assigned to that accident association to which the principal establishment belongs. The same holds true under reservation of article 540, of subsidiary establishments, and of such insured activities which are portions of the establishment.

PAR. 2. Establishments and operations in inland navigation and rafting are included in the insurance of the principal establishment only if they do not extend beyond local traffic.

PAR. 3. Activities which according to their nature belong to the insurance of a branch institute or a mutual insurance association are to be insured in the accident association to which the undertakers engaged in activities of the same kind belong when the latter are more important than the other activities.

#### ARTICLE 632.

The provisions of article 542 are applicable in a corresponding manner for several establishments of the same undertaker all of which are subject to the industrial accident insurance and do not otherwise come under article 631, paragraph 1. This does not hold true for establishments engaged in inland navigation and rafting.

#### ARTICLE 633.

PARAGRAPH 1. The undertaker of an establishment is the one for whose account the establishment is conducted.

PAR. 2. In other cases the undertaker is—

1. In the case of building work which is not carried out by a building establishment conducted as a business, the one for whose account it is conducted;
2. In the case of the activities connected with the keeping of riding animals or conveyances not conducted as a business (art. 537, Nos. 6 and 7), whoever keeps the riding animal or conveyance.

#### ARTICLE 634.

PARAGRAPH 1. An accident association has in those cases to compensate accidents in insured activities in an establishment which is conducted for the account of an undertaker not belonging to it, if an undertaker belonging to it has given the order and has to make payment therefor.

PAR. 2. This applies in a corresponding way for the branch institutes.

### III. CHANGES IN THE STATUS OF THE ACCIDENT ASSOCIATIONS.

#### ARTICLE 635.

Changes in the status of the accident associations are permissible with the beginning of a fiscal year, according to articles 636 to 648.

#### ARTICLE 636.

Several accident associations may unite themselves by a concurrent resolution of the general meetings of the accident associations. The resolution must have the approval of the Federal Council.

## ARTICLE 637.

PARAGRAPH 1. The general meetings of the accident associations affected can resolve that individual branches of industry or geographically limited parts of an accident association shall be transferred to another association. The resolution must receive the approval of the Federal Council.

PAR. 2. The approval can be withheld if the withdrawal would endanger the solvency of one of the accident associations affected.

## ARTICLE 638.

If application is made on the basis of a resolution of the accident associations to have several accident associations united, or separate branches of industry or geographically limited parts, separated from the accident association, and added to another, then if an accident association affected protests, the Federal Council shall decide the matter upon appeal.

## ARTICLE 639.

The general meeting of the accident association decides in the first place upon an application to create a special accident association for separate branches of industry, or geographically limited parts. The Federal Council decides finally.

## ARTICLE 640.

The Imperial Insurance Office prepares the decision of the Federal Council; in such cases the decision senate must express an opinion.

## ARTICLE 641.

The Federal Council may withhold its approval to the creation of a new accident association if—

1. The number of establishments or of the necessary persons would be too small to guarantee its permanent solvency;
2. The acceptance of establishments in the accident associations is refused, which for the same reasons (No. 1) are not in a position to form a solvent accident association of their own and can not properly be assigned to another accident association.

## ARTICLE 642.

If several accident associations combine to form a new accident association, then all their rights and duties are transferred to the latter as soon as the change becomes effective.

## ARTICLE 643.

If parts of an accident association are separated to form another or to be joined to another, then the other accident association from that time on must satisfy the claims for compensation which had grown up against the old accident association on account of accidents in the establishments which have been separated. The same is also applicable if agricultural subsidiary establishments are transferred to an industrial accident association according to the constitution (art. 540, No. 1).

## ARTICLE 644.

Accident associations upon which are placed the obligation of compensation have a claim to a corresponding part of the reserve and of the other assets of the accident association released from these obligations. They are required to assume the payment of a corresponding part of the interest and of the amounts necessary for the refunding of the floating debt (art. 779).

## ARTICLE 645.

The general meetings of the accident associations affected may act in variance with the provisions of articles 642 to 644 through concurrent resolution.



## ARTICLE 646.

If a dispute arises during the negotiations in regard to the division of the assets between the accident associations affected, they may settle the matter by an arbitration decision; otherwise the Imperial Insurance Office (decision senate) shall decide.

## ARTICLE 647.

PARAGRAPH 1. If an accident association becomes unable to fulfill its legal obligations, the Federal Council may dissolve the same if the Imperial Insurance Office (decision senate) makes application therefor.

PAR. 2. The branches of industry of a dissolved accident association shall be apportioned to other accident associations. The latter are to be heard in advance.

PAR. 3. On the dissolution of an accident association its rights and duties are assumed by the Empire.

## ARTICLE 648.

If an accident association which is subject to the supervision of a State insurance office (art. 723) is dissolved as insolvent, then its rights and obligations are to be assumed by the federal State.

## SECTION FOUR—ORGANIZATION OF THE ACCIDENT ASSOCIATIONS.

## I. MEMBERSHIP AND THE RIGHT TO VOTE.

## ARTICLE 649.

Each undertaker is a member of an accident association whose establishment belongs to the branches of industry covered by it and in whose territory the establishment has its seat. The Empire, the federal States, communes, unions of communes, and other public corporations are members in so far as articles 624 to 628 do not prescribe otherwise.

## ARTICLE 650.

Membership begins with the opening of an establishment or with the placing of it under the insurance obligation; for the Empire and the federal States, for communes, unions of communes, and other public corporations, the beginning of the membership is regulated according to articles 625 to 628.

## ARTICLE 651.

PARAGRAPH 1. In each establishment the undertaker must make known through a placard—

1. To which accident association and section the establishment belongs;
2. Where the place of business of the directorate of the accident association and of the section is located.

PAR. 2. If an agricultural establishment is placed under the industrial accident insurance according to article 540, number 1, and article 542, the placard must call attention thereto.

## ARTICLE 652.

If members or their legal representatives do not possess civic rights, they shall not have the right to vote.

## II. REGISTRATION OF THE ESTABLISHMENTS.

## ARTICLE 653.

PARAGRAPH 1. Whoever with an establishment becomes a member of an accident association, must within one week report to the local insurance office in whose district the establishment has its seat the following:

1. The kind of the establishment and the object of the establishment;
2. The number of insured persons;

3. The accident association to which the establishment belongs;
4. If the establishment is first opened after the law comes into force, the date of opening and if the establishment becomes subject to the insurance only after the law enters into force, the day when insurance obligation begins.

PAR. 2. The report is to be sent in duplicate; the receipt thereof will be acknowledged.

PAR. 3. If an establishment has already been reported and when a change in the person only of the undertaker of the establishment has occurred, then a repetition of the report according to paragraph 1 is not required.

#### ARTICLE 654.

The local insurance office assigns each establishment in its territory concerning which a report has been received, within one week by sending one of the reports to the directorate of the accident association designated therein.

#### ARTICLE 655.

If in the opinion of the local insurance office the establishment belongs to an accident association other than that designated, it shall notify the directorate of the latter accident association as well as the undertaker and shall transmit the reports to the directorate of the other accident association.

#### ARTICLE 656.

PARAGRAPH 1. If the report is not sent in or is incomplete, the local insurance office can require the undertaker to give the information within a specified time under penalty of a fine up to 100 marks [\$23.80].

PAR. 2. On appeal against the determination of the fine the superior insurance office decides finally.

PAR. 3. The local insurance office assigns the establishment within one week after the expiration of the specified time limit by furnishing the information itself (art. 653, par. 1).

### III. REGISTER OF ESTABLISHMENTS.

#### ARTICLE 657.

The directorates of the accident associations must keep registers of establishments on the basis of the reports sent to them by the Imperial Insurance Office and of the later assignments (arts. 654 and 656).

#### ARTICLE 658.

The members shall be listed in the register of establishments after it has been ascertained that they have joined the proper association.

#### ARTICLE 659.

PARAGRAPH 1. Membership certificates shall be sent to the members listed in the register of establishments, by the directorate of the accident association. If the accident association is divided into sections, the membership certificate must designate the section to which the undertaker belongs.

PAR. 2. If acceptance in the register is declined, a decision with the grounds therefore must be transmitted to the head of the establishment through the intervention of the local insurance office.

#### ARTICLE 660.

Within one month after the delivery of the membership certificate or of the decision declining membership, appeal against the acceptance or the disallowance must be made by the undertaker to the superior insurance office. The appeal is to be transmitted to the local insurance office. If in proceedings on the appeal it is shown

that although the establishment is subject to the accident insurance it still does not belong to any of the existing accident associations, then the matter is to be laid before the Imperial Insurance Office. The latter shall assign the establishment to that accident association to which according to its nature it is most nearly allied.

#### ARTICLE 661.

If the undertaker does not make an appeal against a decision declining membership within the proper time, the local insurance office may lay the matter before the Imperial Insurance Office; upon application of the accident association such action must be taken.

#### ARTICLE 662.

If in the case mentioned in article 655 the directorate of the accident association designated in the notification accepts the membership of the undertaker, then the directorate of this association shall notify the directorate of the other accident association. The latter can within one month after the receipt of the communication make an appeal.

#### ARTICLE 663.

Extracts from the register of establishments are to be communicated to the directorates of the sections in regard to the undertakers belonging thereto.

#### IV. CHANGES IN THE UNDERTAKERS—CHANGES IN THE ESTABLISHMENT AND IN ITS MEMBERSHIP IN THE ACCIDENT ASSOCIATION.

#### ARTICLE 664.

Within the time specified in the constitution the undertaker must report changes in the person for whose account the establishment is conducted to the directorate of the accident association for entry in the registry of establishments. He remains liable for the contributions up to the end of the fiscal year during which the change is reported without, however, releasing his successor from the liability.

#### ARTICLE 665.

The undertaker must report changes in his establishment which are of importance for his membership in the accident association to the directorate within the time specified in the constitution.

#### ARTICLE 666.

If upon application of the undertaker or if on its own accord the directorate believes it necessary to refer the establishment to another accident association, then it shall refer the establishment to the latter and communicate this fact to the association and through the local insurance office to the undertaker with a statement of the reasons therefor.

#### ARTICLE 667.

**PARAGRAPH 1.** The head of the establishment and the directorate of the other accident association may make protest against the assignment to the directorate which has so assigned the establishment; the last-named directorate shall lay the protest before the superior insurance office.

**PAR. 2.** If protest is not made within the proper time, then the establishment shall be reinscribed in the register and another membership certificate shall be made out or the undertaker.

#### ARTICLE 668.

If an accident association demands the assignment of an establishment and the undertaker or the accident association to which the establishment has hitherto belonged objects to the transfer, then the directorate of this accident association shall lay the matter before the superior insurance office for decision.

## ARTICLE 669.

If the undertaker makes claim for the change in the registry of his establishment, then in case of objection on part of both accident associations he may make application for a decision to the superior insurance office.

## ARTICLE 670.

The provisions of articles 666 and 667 for the assignment of an establishment apply correspondingly in regard to its release from membership.

## ARTICLE 671.

PARAGRAPH 1. If the application for the transfer or release of membership has been granted, then the change in the membership in the accident association shall become effective on the date on which the application has first been received by one of the directorates of the accident associations affected. If the establishment has been transferred or released from membership by the action of the officials, then that date shall be used on which the transfer or the release from membership has been communicated to the undertaker.

PAR. 2. The directorates affected and the undertaker may agree upon another date.

## ARTICLE 672.

If the transfer or release from membership is delayed to an important extent because the legal or constitutional provisions have not been observed, then upon application the superior insurance office may decide that the change in the membership of the accident association shall become effective on a date earlier than that specified in article 671, paragraph 1, however, not earlier than the beginning of the fiscal year during which the claim for contributions has not yet lapsed.

## ARTICLE 673.

PARAGRAPH 1. If single establishments or subsidiary establishments go from one accident association to another, then article 643 applies in regard to the transfer of the accident burden.

PAR. 2. The accident association taking over an establishment has a claim to a corresponding part of the reserve of the accident association released. This part is to be computed according to an average rate which the Imperial Insurance Office shall determine every five years, separately for industrial and agricultural associations, according to the amount of the reserves of all the accident associations.

PAR. 3. Articles 645 and 646 are to be applied here.

## ARTICLE 674.

PARAGRAPH 1. The obligation to make reports in case of changes in an establishment which affect the apportionment in the risk tariff (art. 711) and further procedure are to be regulated in the constitution.

PAR. 2. If the committee or the directorate of the accident association has to draw up and change the risk tariff (art. 707), then the general meeting of the accident association may also transfer to this body the regulation of the obligation to give notice in case of these changes in the establishment.

PAR. 3. The undertaker may appeal against the decision which the accident association issues upon the notification of the changes or in acting on its own initiative.

## V. CONSTITUTION.

## ARTICLE 675.

The accident associations regulate their internal administration and their order of business through a constitution which the general meeting of the accident association decides upon.

## ARTICLE 676.

PARAGRAPH 1. The preliminary directorate elected by the general meeting for the purpose of establishing the organization shall conduct the general meeting and manage the business of the accident association until the directorate elected on the basis of a valid constitution shall take over the business.

PAR. 2. The preliminary directorate shall consist of a chairman, a secretary, and at least three associates.

## ARTICLE 677.

The constitution must specify if—

1. The name, the seat, and the district of the accident association;
2. The composition, rights, and duties of the directorate;
3. The form of the declarations of the decisions of the directorate as well as its signature on behalf of the accident association, the manner of making decisions in the directorate, and its representations as to third parties;
4. The calling of the general meeting of the accident association and its method of arriving at a decision;
5. The right to vote of the members and the examination of their credentials;
6. The rates for loss of earnings and for traveling expenses which are to be granted to the representatives of the insured persons (art. 21);
7. The representation of the accident association as against the directorate;
8. The procedure to be followed by the administrative bodies of the accident association in rating establishments in classes of the risk tariff;
9. The procedure in cases of changes in the establishment and of a change in the person of the undertaker;
10. The consequences of shutting down an establishment or of a change in the person of the undertaker, especially as to the guaranteeing of his contributions, if he shuts down the establishment;
11. The drawing up, examining, and acceptance of the annual balance sheet;
12. The administrative action relating to the issuance of the regulations containing provisions for accident prevention and for the supervision of the establishments;
13. The procedure in case of the reporting and release from membership of insured undertakers, of pilots and of other persons insured according to article 548, number 3, and article 552, as well as concerning the amounts and ascertainment of the annual earnings of undertakers and of pilots;
14. The method of publishing notices;
15. The provisions as to the amendment of the constitution.

## ARTICLE 678.

The constitution may specify—

1. That the general meeting of the accident association shall be composed of delegates;
2. That the accident association shall be divided into local sections;
3. That special district agent shall be appointed as local officials of the accident association.

## ARTICLE 679.

PARAGRAPH 1. If the constitution specifies the above, it must at the same time specify—

The election of the delegates;

The seat and district of the sections;

The composition and calling of the general meetings of the sections and the manner of forming decisions;

The composition, rights, and duties of the directorates of the sections, the election, the districts, and the rights and duties of the special officials and their substitutes.

PAR. 2. The general meeting of the accident association may delegate the delimitation of the districts, and the election of the district agents and their substitutes, to the directorate of the accident association or of the section and may delegate the election of the directorates of the sections to the general meetings of the sections.

## ARTICLE 680.

The constitution may empower the directorate of the accident association to impose fines up to 25 marks [\$5.95] upon undertakers and persons holding equal positions according to article 912 who act contrary to their duties as stated in the constitution.

## ARTICLE 681.

The constitution requires the approval of the Imperial Insurance Office. If the approval is to be denied, then the decision senate shall decide the matter; the reasons for the disapproval are to be stated. If the approval is not given, then on appeal the Federal Council shall decide.

## ARTICLE 682.

If the approval has been finally denied, then within a time specified by the Imperial Insurance Office the general meeting of the accident association shall decide upon a new constitution. If no decision is made or if the new constitution is also finally disapproved, then the Imperial Insurance Office shall issue the constitution and direct that the necessary steps for its execution shall be taken at the expense of the accident association.

## ARTICLE 683.

The constitution may be amended only with the approval of the Imperial Insurance Office. If such approval is to be denied, then the decision senate shall decide; the reasons for the disapproval are to be stated. If the approval is denied, then upon appeal the Federal Council shall decide the matter.

## ARTICLE 684.

PARAGRAPH 1. If the constitution has been approved, then the directorate of the accident association shall publish the name and seat of the accident association and the districts of the sections in the Reichsanzeiger.

PAR. 2. The same rule is applicable in the case of amendments.

## VI. ADMINISTRATIVE BODIES OF THE ACCIDENT ASSOCIATION.

## ARTICLE 685.

The board of directors shall administer the accident association in so far as the law or the constitution do not provide otherwise.

## ARTICLE 686.

The following matters remain within the power of the general meeting of the accident association:

1. The election of the members of the directorate;
2. The amendment of the constitution;
3. The examination and acceptance of the annual balance sheet, if the general meeting of the accident association has not appointed a special committee for this purpose;

4. The specification of the amount of the lump sums for loss of time and the rates for travel expenses for the members of the official bodies of the accident association.

## ARTICLE 687.

PARAGRAPH 1. Subject to the reservations of articles 13 and 14, whoever belongs to an accident association as a member, or holds a place equal to a member (art. 13, par. 2), may be elected to the directorate or as a district agent of the accident association, or as a delegate in the general meeting of the accident association (art. 678, No. 1).

PAR. 2. Those members of a guild, or of the supervisory council of a stock company, of a copartnership with shares (*Kommanditgesellschaft auf Aktien*), or of a company with limited liability belonging to an accident association, are eligible as members of the directorate who have been at least for five years the undertaker or the duly authorized manager of an establishment belonging to an accident association.

PAR. 3. If branches of industry of various kinds or various kinds of establishments (such as large, medium, and small establishments) are combined in one accident association, then they shall as far as possible be represented in the directorate. The constitution shall specify the particulars.

PAR. 4. The constitution of an accident association may provide that the delegates of the insured persons may belong to its directorate, or if the accident association is divided into sections, to the directorates of the sections, and that they shall have the right to vote. The mining accident association may provide in its constitution that the delegates of the insured persons must be elders of a miners' fund. Their election shall be made through the delegates elected according to article 858; article 859 is applicable in regard to their eligibility.

## ARTICLE 688.

The members of the accident associations may have themselves represented in the general meeting of the accident association through other members possessing the right to vote or through a duly authorized manager of their establishment.

## ARTICLE 689.

As long as and in so far as the election of the legally authorized official bodies of the accident association does not take place, or the legally authorized official bodies refuse to perform their duties, the Imperial Insurance Office shall either itself or through agents conduct the business at the cost of the accident association.

## VI. EMPLOYEES OF ASSOCIATION.

## ARTICLE 690.

PARAGRAPH 1. The general meeting of the accident association shall regulate in appropriate manner the general conditions of appointments and the legal status of the employees of the accident association through service regulations.

PAR. 2. Employees who are employed only on probation, for temporary services, for preparation, or only in a subsidiary manner without compensation, are only subject to the service regulations in so far as the latter provide.

## ARTICLE 691.

The principles stated in articles 692 to 699 shall control in the matter of the service regulations.

## ARTICLE 692.

Appointments are to be made through written contracts.

## ARTICLE 693.

PARAGRAPH 1. The right of the accident association to give notice of dismissal may not place the employee less favorably than he would be in the absence of an agreement under the civil law.

PAR. 2. An employee entitled to notice before dismissal may be discharged without such notice if an important reason exists therefor. In the case of employees who may be dismissed with notice who have been employed longer than 10 years, the notice of dismissal may be given only for an important reason. In the latter case it shall also be considered as an important reason if the employee, because of a change in the status of the accident association or in its business administration, can be spared, not merely temporarily; in such cases the employees with the shorter service term of that employee class in which the change is necessary shall first be given notice of dismissal.

## ARTICLE 694.

An appointment for life is permissible in so far as the service regulations provide therefor. The latter must then also regulate the conditions for life appointments as well as the legal status of such employees.

## ARTICLE 695.

The service regulations must specify the salaries which are to be paid as a minimum for the separate classes of the employees, with the exception of those specified in article 690, paragraph 2, as well as the basis for an increase in salary. The regulations shall at the same time specify how long the salary shall continue to be paid if the employee, without any fault of his own, is prevented from rendering services.

## ARTICLE 696.

Employees who abuse their positions in the service or their official business for the purpose of religious or political activity shall be reprimanded by the directorate, after an opportunity has been given to defend themselves, and in case of repetition shall be dismissed; their dismissal shall require the approval of the Imperial Insurance Office. Religious or political activity outside of their official activities, and the exercise of the right of association in so far as it does not conflict with the laws, shall not be prevented and shall not be considered as a reason either for notice of dismissal or for discharge.

## ARTICLE 697.

If the service regulations grant a right to retirement pension or to benefits for survivors, then the regulations shall specify the conditions for the granting thereof.

## ARTICLE 698.

PARAGRAPH 1. Appointments may be intrusted only to the business directors for the persons designated in article 690, paragraph 2. The chairman of the directorate must then within a time specified in the service regulations, but of not more than six months, determine as to further employment according to article 690, paragraph 2. For such persons he shall also specify the conditions both of notice of dismissal and of discharge.

PAR. 2. In addition the directorate shall decide in regard to the appointment, the notice of dismissal and discharge, as well as upon the apportionment to one of the classes of employees, the increase in salary, and the granting and disallowance of retirement pension and benefits for survivors.

## ARTICLE 699.

The service regulations shall specify the authorities competent for the imposition of penalties and the legal remedies against them.



Fines may not be imposed for amounts higher than the service income of one month.

## ARTICLE 700.

PARAGRAPH 1. Before formulating the service regulations the directorate shall give the adult employees a hearing.

PAR. 2. The service regulations require the approval of the Imperial Insurance Office.

PAR. 3. If this approval is not given and if within the specified time other service regulations are not drawn up or are not approved, then the Imperial Insurance Office shall issue the service regulations.

PAR. 4. The same holds true for amendments.

## ARTICLE 701.

PARAGRAPH 1. Decisions of the directorate of the accident association or of the general meeting of the accident association which conflict with the service regulations must be challenged by the chairman of the directorate in the form of an appeal to the Imperial Insurance Office; the appeal acts as a stay.

PAR. 2. If a provision of the contract of appointment conflicts with the service regulations it shall be void.

## ARTICLE 702.

No provision shall be made granting preference in the filling of vacancies to persons in possession of a certificate entitling the holder to a civil-service position (soldiers entitled to civil employment).

## ARTICLE 703.

PARAGRAPH 1. The directorate may on their own responsibility transfer specified duties to salaried business managers.

PAR. 2. The Imperial Insurance Office shall specify the details in such cases.

## ARTICLE 704.

The salaries of the employees shall be determined by the directorate in detail in the budget.

## ARTICLE 705.

PARAGRAPH 1. In controversies connected with the conditions of service of employees who are subject to the service regulations, the Imperial Insurance Office (decision senate) shall decide upon appeal if the matter relates to notice of dismissal, discharge, fines of more than 20 marks [\$4.76], or pecuniary claims.

PAR. 2. Pecuniary claims are subject to the following special provisions:

PAR. 3. Appeal to law is permissible. Suit may only be brought within one month after the decision of the Imperial Insurance Office has been made; the time limit is a peremptory time limit in the meaning of article 223, paragraph 3, of the Code of Civil Procedure.

PAR. 4. The regular courts shall be required to follow the decisions of the Imperial Insurance Office on the question whether, the period of notice of dismissal having been observed, a notice of dismissal may be given for an important reason (art. 693, par. 2, sentences 2 and 3);

PAR. 5. In questions concerning the determination of fines, an appeal to the regular courts is not permissible;

PAR. 6. On the basis of valid decisions of the insurance authorities, executions shall be made according to book 8 of the Code of Civil Procedure.

## VIII. FORMATION OF THE RISK CLASSES.

## ARTICLE 706.

The general meeting of the accident association must form risk classes according to the degree of risk of accident for the estab-

## 1342 WORKMEN'S COMPENSATION AND INSURANCE.

lishments belonging to the accident association in the form of a risk tariff and grade the amount of the contributions thereon.

### ARTICLE 707.

The general meeting may authorize a committee or the directorate to draw up and amend the risk tariff.

### ARTICLE 708.

PARAGRAPH 1. The risk tariff must be reexamined after not more than two fiscal years at first, and thereafter at least for every five-year period with respect to the accidents which have occurred.

PAR. 2. If the amendment of the tariff is not intrusted to the directorate, the latter must place before the competent official bodies of the accident association the result of the reexamination, together with a list of the accidents entitled to compensation arranged according to branches of industry. These officials must decide whether the risk tariff is to be retained or is to be amended.

### ARTICLE 709.

The risk tariff and every amendment thereto shall require the approval of the Imperial Insurance Office, to which the list of accidents shall be submitted in the case mentioned in article 708.

### ARTICLE 710.

If the competent official bodies of the accident association do not draw up the risk tariff within the time specified to them or if the tariff is not approved, then the Imperial Insurance Office itself shall draw up the tariff after a hearing of the official bodies of the accident association.

### ARTICLE 711.

PARAGRAPH 1. The accident association assigns the establishments in the risk classes for the duration of the tariff according to provisions of the constitution.

PAR. 2. After the classification of the establishments the accident association may reclassify an establishment for the period of the tariff, if the statements of the undertaker were incorrect or if a change has taken place in the establishment.

PAR. 3. The undertaker has the right of appeal against the classification.

### ARTICLE 712.

PARAGRAPH 1. The general meeting of the accident association may impose supplementary charges or grant rebates for the coming tariff period or a part thereof to heads of establishments in accordance with the accidents which have occurred in their establishments.

PAR. 2. The employer has the right of appeal against the determination of supplementary charges.

## IX. DIVISION AND JOINT CARRYING OF THE BURDEN.

### ARTICLE 713.

PARAGRAPH 1. The constitution may provide that the sections shall bear the compensation for accidents which occurred in their districts up to three-fourths, and in the case of the mining accident association a proportion in excess thereof.

PAR. 2. The amounts which thereby become a burden to the sections are to be assessed upon their members according to the risk class and the amount of their contribution.

### ARTICLE 714.

PARAGRAPH 1. Accident associations may make an agreement to carry in common either the whole or a part of the burden of compensation.

PAR. 2. In such case it must be specified how the common burden is to be distributed upon the accident associations affected.

## ARTICLE 715.

The agreement shall require the consent of the general meetings of the accident associations affected and the approval of the Imperial Insurance Office. It may become effective only with the beginning of a fiscal year.

## ARTICLE 716.

PARAGRAPH 1. The general meeting of the accident association shall decide how the share of the accident association in the common burden shall be distributed upon the individual members.

PAR. 2. If not otherwise provided, it shall be assessed in the same manner as the amounts paid for compensation which the accident association according to this law is required to pay.

## X. ADMINISTRATION OF THE ASSETS.

## ARTICLE 717.

The Imperial Insurance Office may publish regulations in regard to the safe-keeping of the securities.

## ARTICLE 718.

PARAGRAPH 1. The accident association must invest not less than one-fourth of its assets in bonds of the Empire or of the federal States.

PAR. 2. The association may invest not more than one-half of its assets in a manner otherwise than prescribed in articles 26 and 27. For this purpose it shall obtain the approval of the Imperial Insurance Office.

PAR. 3. If an accident association desires to invest more than one-fourth of their assets according to paragraph 2 it must in addition have for this purpose the approval of the Federal Council, or if the association is subject to the State insurance office, it must have the approval of the highest administrative authorities of the federal State.

## ARTICLE 719.

PARAGRAPH 1. Such an investment (art. 718, pars. 2 and 3) is permissible only in securities; in other ways only for administrative purposes, only for the avoidance of loss of assets, or for undertakings which—

1. Are for the benefit either exclusively or principally of the persons subject to the insurance;
2. Or in so far as they promote the personal credit of the members of the accident association in the way of cooperation.

PAR. 2. The Imperial Insurance Office shall specify the particulars for the cases mentioned in paragraph 1, No. 2.

## ARTICLE 720.

PARAGRAPH 1. Approval is required for—

The purchase of pieces of ground valued at more than 5,000 marks [\$1,190];

The erection of buildings valued at more than 10,000 marks [\$2,380];

The purchase of necessary articles of furniture the total value of which is more than 5,000 marks [\$1,190].

PAR. 2. The approval is not needed for the purchase of pieces of ground on which the accident association has made loans in the case of compulsory sale.

## ARTICLE 721.

The accident associations must make reports to the Imperial Insurance Office according to the regulations of the latter, in regard to their business and finances. The Imperial Insurance Office shall each year draw up a report concerning the total financial operations

of the preceding fiscal year. This report is to be laid before the Reichstag.

#### SECTION FIVE—SUPERVISION.

##### ARTICLE 722.

The Imperial Insurance Office shall exercise supervision of the accident associations.

##### ARTICLE 723.

If a State insurance office is created for a federal State, it shall exercise supervision of the accident associations which do not extend beyond its territory.

##### ARTICLE 724.

For these accident associations, the State insurance office shall take the place of the Imperial Insurance Office in matters concerning—

- Controversies concerning the apportioning of several establishments to one accident association according to articles 542 and 632;
- Controversies between an accident association and a public corporation in case of negotiations in regard to the distribution of assets mentioned in article 625, paragraph 5, and the corresponding provisions of article 627, paragraph 3, and of article 628, paragraph 4;
- Changes in the status of accident associations (arts. 635 to 648);
- Acceptance in the register of establishments (arts. 660 and 661);
- Changes in the membership of an establishment in the accident association in the case mentioned in article 673, paragraphs 1 and 3;
- Approval and drawing up of the constitution (arts. 681 to 683);
- Taking over the business of the accident association (art. 689);
- Service regulations for the employees of the accident association (arts. 690 to 702), as well as controversies arising out of their service relations (art. 705);
- Risk tariffs (art. 706 to 712);
- Joint carrying of the burden of compensation (art. 715);
- Administration of the assets of the accident associations in the cases mentioned in articles 717 to 720, but excluding article 719, paragraph 2;
- The collection of contributions and premiums (art. 736, pars. 2 and 3), as well as the building up of the reserve (arts. 741 to 747);
- Guarantees of one having building work done (art. 773);
- Covering of the claims of the Postoffice Department (arts. 781 and 782);
- Branch institutes and insurance associations (arts. 783 to 842) but excluding the cases mentioned in articles 799 and 839;
- Additional institutions of the accident associations (arts. 845 to 847);
- Accident prevention and supervision (arts. 848 to 891), but excluding the cases mentioned in article 883;
- Reporting the names of the administrative officials (art. 893).

##### ARTICLE 725.

PARAGRAPH 1. If the matter concerns the cases mentioned herewith, the Imperial Insurance Office decides whether an accident association which is subject to another State insurance office or to the Imperial Insurance Office, is affected. The State insurance office then forwards the documents to the Imperial Insurance Office. These cases are the following:

Controversies relating to the assignment of several establishments to one accident association according to articles 542 and 632;

Changes in the status of the accident associations in the cases mentioned in articles 640 and 646;

Acceptance in the register of establishments (arts. 660 and 661);

Changes in the membership of an establishment in the accident association in the case mentioned in article 673, paragraphs 1 and 3;

Joint carrying of the burden of compensation (art. 715);

PAR. 2. If the matter relates to common additional institutions of several accident associations (art. 847), then the Imperial Insurance Office remains the competent authority for these additional institutions provided that all of the accident associations affected are not subject to the same State insurance office.

## SECTION SIX.—PAYMENT OF THE COMPENSATION—RAISING THE FUNDS.

### I. PAYMENTS THROUGH THE POSTOFFICE DEPARTMENT.

#### ARTICLE 726.

PARAGRAPH 1. The accident association shall pay the compensation upon notification of the directorate of the accident association through the Post Office Department, and furthermore through that post office in whose district the beneficiary resides.

PAR. 2. The payee shall be notified of the paying office by the directorate.

PAR. 3. If the payee removes his residence, he may make application either to the directorate or to the post office of his old place of residence to have the payments changed to his new place of residence.

#### ARTICLE 727.

Every person who is entitled to keep a public seal is authorized to give out and to attest the requisite certificates in such payments.

#### ARTICLE 728.

The highest postal authorities may collect from each accident association an advance sum. According to the choice of the accident association it shall be transmitted either quarterly or monthly to the office designated by the Post Office Department, and may not be greater than that amount which the accident association will probably have to pay in the current fiscal year.

#### ARTICLE 729.

The Imperial Insurance Office may specify in what manner payments are to be made to payees who customarily reside in a foreign country.

#### ARTICLE 730.

The mining accident association may specify through its constitution that miners' associations or miners' funds shall pay the compensation instead of the Post Office Department.

### II. RAISING THE FUNDS.

#### ARTICLE 731.

PARAGRAPH 1. The accident associations must collect the means for their expenditures in the form of members' contributions, which shall cover the needs of the preceding fiscal year.

PAR. 2. In the case of the engineering and excavating association (*Tiefbau-Berufsgenossenschaft*) the contributions must, in addition to other expenditures, cover the capitalized value of the pensions which have become a liability of the accident association in the preceding fiscal year. The principles for the obtaining of the capi-

talized values are to be determined by the Imperial Insurance Office.

PAR. 3. In the case of the branch institutes for building work fixed premiums as well as contributions are to be collected from the communes and other unions, and in the case of branch institutes and insurance associations for the keeping of riding animals or conveyances fixed premiums are to be collected (arts. 783 to 842).

#### ARTICLE 732.

PARAGRAPH 1. The members' contributions are to be assessed, first, according to the earnings received by the insured persons in the establishments, though the local wage rate for adults over 21 years of age must be the minimum, and, second, according to the risk tariff.

PAR. 2. If the earnings received during the contribution period exceed an annual amount of 1,800 marks [\$428.40], then only one-third of the excess shall be included in the computation.

#### ARTICLE 733.

The constitution may provide that in the assessment of the contributions the earnings actually received shall be used in the computation.

#### ARTICLE 734.

In the case of establishments which regularly employ not more than five insured persons, the constitution may provide that with the consent of the undertaker a lump sum shall be paid instead of the computed individual earnings, or that uniform contributions shall be paid according to a standard specified by it; the constitution shall also specify the principles to be used in these cases.

#### ARTICLE 735.

The constitution may provide that in the case of a person giving orders to a home worker, he shall pay the contributions of those employed in home work by the home worker, and if the latter himself is insured according to the constitution, the person giving orders shall also pay for him.

#### ARTICLE 736.

PARAGRAPH 1. Contributions may not be collected from members nor shall funds from the property of the accident association be employed for purposes other than—

- For covering the cost of the compensation and the cost of administration;
- For the accumulation of a reserve (arts. 741 to 748);
- For the payment of the advances to the post office (art. 728) and for the refunding and interest of the floating debt (art. 779);
- For rewards in the case of rescuing injured persons;
- For accident prevention;
- For securing employment for persons injured by accident;
- For the establishment of medical or convalescent institutions;
- For the establishment of institutions of the kind specified in article 607.

PAR. 2. If according to article 720 the approval of the Imperial Insurance Office is required for the purposes therein designated, such approval is also required for the collection of contributions for such purposes.

PAR. 3. These provisions are correspondingly applicable to insurance associations (*Versicherungsgenossenschaften*).

#### ARTICLE 737.

PARAGRAPH 1. Newly created accident associations may collect in advance from its members for the first year the funds which are necessary to defray the cost of administration and to pay the post-office advance.

PAR. 2. If the constitution does not provide otherwise, these contributions shall be based on the number of persons subject to the insurance who are employed in the establishments of the members.

#### ARTICLE 738.

PARAGRAPH 1. The constitution may provide that the members shall pay advances on the contributions (art. 731).

PAR. 2. The constitution may provide that the directorate shall be entitled to collect advances from—

- (a) Establishments which apparently will exist only temporarily;
- (b) Individual members who have been repeatedly in arrears in the payment of the contributions.

PAR. 3. The advances shall be collected from the individual members according to the amount of those contributions which were assessed upon them for the preceding fiscal year or were paid according to article 734.

PAR. 4. The advances of new members are to be based on the amount which they would have had to pay as members, according to the scope of their establishment, for the cost of the preceding fiscal year.

PAR. 5. The constitution or the general meeting of the accident association shall specify the date of payment; two weeks thereafter the advance must have been paid to the directorate.

#### ARTICLE 739.

If the highest postal officials make use of their right to collect advances (art. 728), the constitution may provide that the requisite funds, in so far as they are not available out of the assessment for the preceding fiscal year (art. 749), are to be collected from the members of the current fiscal year through contributions (art. 731).

#### ARTICLE 740.

PARAGRAPH 1. The directorate may collect from the undertakers of establishments whose seat is located in a foreign country, contributions of double amount and require them to give security if they carry on in Germany an establishment subject to the insurance for a time only.

PAR. 2. This provision is correspondingly applicable to branch institutes and insurance associations for the keeping of riding animals or conveyances.

#### ARTICLE 741.

The accident associations must accumulate reserves.

#### ARTICLE 742.

PARAGRAPH 1. The reserve shall be formed by means of supplementary charges reckoned on the amounts paid out as compensation.

PAR. 2. There shall be collected—

- In the first assessment, 300 per cent;
- In the second, 200 per cent;
- In the third, 150 per cent;
- In the fourth, 100 per cent;
- In the fifth, 80 per cent;
- In the sixth, 60 per cent;
- In the seventh to the eleventh each time 10 per cent less.

PAR. 3. The interest shall also be turned into the reserve.

#### ARTICLE 743.

PARAGRAPH 1. After the first 11 years, or if this period had already expired at the time of the coming into force of the industrial accident insurance law (Reichs-Gesetzblatt, 1900, p. 585) then from year 1901 on, the supplementary charge shall be so measured that

in the following 21 years the capital of the reserve shall be equal to three times the compensation which is to be paid in the year of the last supplementary charge.

PAR. 2. If an accident association in the 21 years would have to collect unreasonably high supplementary charges, then the Imperial Insurance Office can extend the period not more than 10 years.

PAR. 3. The Imperial Insurance Office specifies the amount of the supplementary charge which the accident association has to collect.

#### ARTICLE 744.

PARAGRAPH 1. The interest on the reserve received in the intermediate period (art. 743) may be used to cover the current expenditures. After the expiration of this period those amounts are to be taken from the interest which are necessary to prevent the further increase in the assessments which according to experience would be charged on the average on each 100 marks [\$23.80] of earnings. The remainder of the interest is to be added to the reserve until the reserve is equal to one-half of the capital necessary to cover the compensation liabilities at the period in question.

PAR. 2. In special cases the Imperial Insurance Office may specify which part of the interest shall be used for the reduction of the assessments and which part for the addition to the reserve.

PAR. 3. The Imperial Insurance Office shall also specify the manner in which the capitalized value of the liabilities for compensation is to be obtained.

#### ARTICLE 745.

The securities in which the reserve is invested are to be reported at their purchase price in determining the assets.

#### ARTICLE 746.

With the approval of the Imperial Insurance Office an accident association in case of need can draw on the capital of the reserve and also draw on the interest thereof before the expiration of the first 11 years. The reserve is then to be restored according to regulations of the Imperial Insurance Office.

#### ARTICLE 747.

The general meeting of the accident association may upon application of the directorate decide to make additional supplementary charges for the reserve at any time. Such decisions require the approval of the Imperial Insurance Office.

#### ARTICLE 748.

PARAGRAPH 1. Articles 742 to 747 are not applicable to the engineering and excavating association. The existing reserve, however, shall be maintained at its present amount; the interest thereon can be used to cover the liabilities of the accident association.

PAR. 2. With the approval of the Imperial Insurance Office the accident association may in case of need draw on the capital of the reserve. It shall then be restored according to provisions of the Imperial Insurance Office.

### III. PROCEDURE IN ASSESSMENTS AND COLLECTIONS.

#### ARTICLE 749.

PARAGRAPH 1. The directorates of the accident associations must assess upon the members the payments which the highest postal authorities prove to have been made (art. 777), together with the other expenditures, according to the standard of apportionment already determined upon. In such case the provisions concerning the division and joint carrying of the cost (arts. 713 to 716) are to be considered and the advances already collected to be deducted.



**PAR. 2.** Article 764 applies to the engineering and excavating association; article 731, paragraph 3, article 763, and articles 799 to 842 are applicable to the branch institutes; article 731, paragraph 3, and article 842, paragraph 2, are applicable to the insurance associations.

#### ARTICLE 750.

**PARAGRAPH 1.** For the purpose of the assessment and the collection of the contributions each member, unless lump sums are used or uniform contributions are to be paid (art. 734) must transmit his wage list within six weeks after the close of the fiscal year to the directorate of the accident association.

**PAR. 2.** This wage list must contain—

1. The insured persons employed in the establishment during the preceding fiscal year and the earnings received by them;
2. If the wages actually earned are not used as a standard, a computation of the earnings which are to be used in the assessment of the contribution;
3. The risk class in which the establishment is rated.

**PAR. 3.** The constitution may specify that in place of the individual insured persons and the earnings received by them, the wage list shall contain the number of the insured persons and the total amount of earnings for the whole fiscal year or for shorter periods (summary wage list).

#### ARTICLE 751.

The constitution may provide—

That the wage list shall be transmitted either quarterly or semi-annually;

That current wage lists (wage books) shall be kept from which this information can be taken;

That the wage lists (wage books) shall be preserved for three years.

#### ARTICLE 752.

In the case of members who do not transmit the wage lists punctually or whose lists are incomplete, the accident association shall itself either prepare the list or complete the same.

#### ARTICLE 753.

On the basis of the wage lists, the lump-sum payments and the uniform contributions, the directorate of the accident association shall prepare a total list of insured persons who have been employed by the members during the preceding fiscal year, and a statement of the earnings that can be included in the computation which the insured persons have received. On this basis it shall compute the contribution which falls to each member in order to cover the total expenditure.

#### ARTICLE 754.

**PARAGRAPH 1.** To each member shall be sent an extract from the assessment roll which shall be drawn up for the distribution of the annual expenditures of the accident association, together with the demand, that within two weeks he shall pay the contribution determined upon, from which shall have been deducted the advances paid, in order to avoid compulsory collection and in the case of voluntary insurance in order to avoid exclusion (art. 553), if the constitution permits this step.

**PAR. 2.** The extract must contain statements which will permit the person required to make a payment to verify the computation of the contribution.

## ARTICLE 755.

PARAGRAPH 1. After the transmission of the extract, the accident association can then determine the contribution otherwise only if—

The classification of the establishment in the risk classes is changed at a later time;

A change in the establishment occurring in the course of the fiscal year becomes known afterwards;

The wage list proves inaccurate.

PAR. 2. If in such cases or on account of failure to report an establishment the accident association has lost contributions, then the undertaker shall at a later time pay the amount lacking, provided that the claim has not lapsed.

## ARTICLE 756.

In the case of a new or subsequent determination of the contribution the procedure is the same as in the case of the first determination.

## ARTICLE 757.

PARAGRAPH 1. Within two weeks the members may make protest against the determination of their contributions to the directorate, but remain obliged to make provisional payment.

PAR. 2. They are not required to make provisional payment if the earnings are already contained in the wage list for another accident association and the contributions which are based on these earnings have been paid to this accident association.

## ARTICLE 758.

PARAGRAPH 1. If the directorate does not comply with the protest or does not comply to the extent applied for, then an appeal against its decision is permissible only subject to article 759.

PAR. 2. Appeals shall be based only upon—

Mistakes in computation;

Inadequate consideration of the rebates (art. 712);

Incorrect rates of earnings;

Inaccurate rating in a risk class.

PAR. 3. Protests on account of the last two reasons are not permissible if the directorate has itself drawn up the wage list or completed the same on account of the delay of the undertaker.

## ARTICLE 759.

If claims are based on the reasons stated in article 757, paragraph 2, and the accident association declines to recognize them as well founded, it must place the matter before the superior insurance office. The latter shall decide to which accident association the earnings are to be reported and suspends a divergent determination of the contributions even if such determination has already become effective. An appeal against the decision of the superior insurance office effects a stay.

## ARTICLE 760.

PARAGRAPH 1. If the contribution is reduced upon the appealing of a claim or upon protest, then the amount lost is to be included in the assessment for the succeeding fiscal year.

PAR. 2. Excessive payments are to be returned or to be deducted from the contribution for the succeeding fiscal year.

## ARTICLE 761.

If it develops later that a contribution paid without a protest has been collected either wholly or partly without right, then the provisions of articles 757 to 760 are correspondingly applicable.

## ARTICLE 762.

Uncollectible contributions shall be charged to the whole membership. They shall be covered for the time being out of the available

funds of the accident association, or if necessary, out of the reserve, and shall be considered in the assessment of the succeeding fiscal year.

ARTICLE 763.

In the case of accident associations to which a branch institute is attached the directorate of the accident association determines which part of the payments called for by the highest postal authorities is to be paid by the accident association and which part is to be paid by the branch institute.

ARTICLE 764.

PARAGRAPH 1. The engineering and excavating association shall pay that part which falls upon the accident association itself from its available funds.

PAR. 2. At the same time it must compute according to article 731, paragraph 2, the capitalized value of the burdens which have arisen for the association in the preceding fiscal year and collect the same from its members, together with the other expenditures according to the standard of apportionment already determined upon. In such case the provisions concerning the division and joint carrying of burdens, articles 713 to 716, are to be considered and the advances already collected to be deducted.

PAR. 3. In other matters articles 750 to 763 are applicable.

ARTICLE 765.

PARAGRAPH 1. If the undertaker of a building operation conducted as a business is in arrears with the payment of contributions and the execution procedure shows that he is bankrupt, then the local insurance office on application of the directorate of the accident association may order, with the right to revoke the same, that the person for whose account the building is done as well as subcontractors are in so far liable for the contributions during one year after their final determination, as they have arisen after the issuance of the order. For such cases the constitution may specify the particulars in regard to the keeping of wage lists to determine the amount of wages for which the person on whose account the building is being done or the subcontractor is liable.

PAR. 2. The liability of subcontractors takes precedence of that of the person for whose account the building work is done.

ARTICLE 766.

PARAGRAPH 1. An order of this kind must clearly designate the undertaker to whom it applies, giving his name, residence, and business establishment. The order shall be communicated not only to him but also to the police authorities, both of his residence and of the seat of his establishment if the latter is in a separate place.

PAR. 2. If the employer changes his residence or the seat of his establishment then the police officials shall notify the authorities who are competent for the new place of residence or seat of the establishment.

PAR. 3. The police authorities must, on request, give the parties affected information concerning the order.

ARTICLE 767.

PARAGRAPH 1. The undertaker must without delay give notice in writing concerning the order to the person on whose account the work is done. If he takes over a contract for building work then he must give notice thereof in advance. Subcontractors must without delay give information concerning the notice to the person giving the order.

PAR. 2. Whoever acts contrary to these provisions shall be punished with confinement in jail up to one year; in addition a fine up to 3,000 marks [\$714] may be imposed. If he has acted negligently he shall be punished with a fine up to 100 marks [\$23.80]. The penalty is only imposed if the person giving the order suffers damage as a result of the contravention.

#### ARTICLE 768.

The local insurance office shall suspend the order whenever it has been proved to it through certificate of the directorate that the undertaker is no longer in the debt of the accident association.

#### ARTICLE 769.

The superior insurance office decides finally upon appeal against—  
 Decrees of the local insurance office;  
 Refusals to issue such decrees;  
 Decisions of the local insurance office on the cancellation of the decree.

#### ARTICLE 770.

In controversies between the accident association and the person on whose account the building work is done or the subcontractors in regard to the liability in such cases (art. 765) the superior insurance office (decision chamber) shall decide; appeal to the regular courts is not permitted.

#### ARTICLE 771.

Articles 765 to 770 are correspondingly applicable for establishments conducted as a business engaged in hauling, inland navigation, and inland fishing. In such cases the proprietor of the apparatus used in the business takes the place of the person on whose account the building work is done and of the person giving the order. In case there are several proprietors they are liable as collective debtors.

#### ARTICLE 772.

PARAGRAPH 1. The highest administrative authorities of the federal State may specify that before the beginning of the building work the persons on whose account the work is done shall furnish guaranties to the building accident association for the payment of the contributions or the premiums.

PAR. 2. They shall also specify at the same time the communes and the building operations to which this provision is applicable.

PAR. 3. For such building operations the building permit shall be issued only if the accident association certifies that the guaranty has been provided.

#### ARTICLE 773.

The accident association shall determine the kind and the amount of the guaranty; the amount is to be proportioned according to the probable wage payments for the insured building workers. The Imperial Insurance Office shall issue general regulations.

#### ARTICLE 774.

The person for whose account the building work is done may apply for the return of the guaranties from the accident association whenever the building work is carried out by building contractors for whom he is not liable (art. 765).

#### ARTICLE 775.

The highest administrative authorities may withdraw their regulations (art. 772).

#### ARTICLE 776.

In controversies between the accident associations and persons for whom building work is done in the cases mentioned in articles 772 to 775, the superior insurance office shall decide; appeal to the regular courts is not permissible.

## IV. TRANSFERRING AMOUNTS TO THE POST OFFICE DEPARTMENT.

## ARTICLE 777.

PARAGRAPH 1. Within eight weeks after the end of each fiscal year the highest postal authorities shall report to the directorates of the accident associations the payments made on their account and shall designate the post offices to which these amounts are to be refunded.

PAR. 2. After acknowledgment by the directorates of the accident associations of the amounts demanded, the highest postal authorities shall notify the accounting bureau of the Imperial Insurance Office of the amounts which have been paid in the preceding fiscal year for each accident association.

PAR. 3. The accounting bureau balances the actual amounts which are to be refunded to the Post Office Department.

## ARTICLE 778.

If an accident association does not have to pay an advance to the Post Office Department, then the directorate of the accident association shall transmit the amounts which it has to pay to the Post Office Department within three months after the receipt of the demand to the offices designated therein.

## ARTICLE 779.

Payments for compensation which the Post Office Department made in the year 1909 for an accident association are to be treated as the floating debt of the latter, and must have  $3\frac{1}{2}$  per cent interest paid thereon, and are to be refunded at the rate of  $3\frac{1}{2}$  per cent, together with the interest saved. The Empire shall defray two-fifths of these amounts of interest and refunding, while the accident associations have to transmit three-fifths to the Post Office Department in July of each year, together with the partial amounts of the postal advance then due.

## ARTICLE 780.

PARAGRAPH 1. The size of the postal advance and the amount to be paid according to article 779 shall be determined for each accident association by the accounting bureau of the Imperial Insurance Office, and a statement thereof shall be communicated to the accident associations and to the highest postal authorities.

PAR. 2. For the computation of the postal advance the highest postal authorities communicate to the accounting bureau the amount of the payments in the preceding fiscal year which have been authorized by the directorates of the accident associations. Until the amount of the new postal advance has been determined the partial amounts shall continue to be paid in the same amounts as heretofore. These amounts shall be deducted when the new advance has been determined upon.

## ARTICLE 781.

If the claims of the Post Office Department are not paid punctually by the accident associations, then the Imperial Insurance Office, upon application of the Post Office Department, shall institute proceedings for compulsory collection.

## ARTICLE 782.

In order to cover the claims of the Post Office Department the Imperial Insurance Office shall first make use of the available assets in the treasury of the accident association. In so far as these assets are not sufficient, proceedings for compulsory collection against the members of the accident association shall be instituted and continued until the arrears are covered.

## SECTION SEVEN—BRANCH INSTITUTES.

## I. BRANCH INSTITUTES FOR THE BUILDING TRADES.

1. *Establishment, scope, and organization.*

## ARTICLE 783.

PARAGRAPH 1. Those persons shall be insured in the branch institutes attached to an accident association of persons carrying on building work, who are employed in such work by the undertaker carrying on building work otherwise than as a business in the district of the accident association (art. 633, par. 2, No. 1).

PAR. 2. The same shall be applicable in the case of self-insured undertakers engaged in such building work.

## ARTICLE 784.

The branch institutes may not undertake other kinds of insurance.

## ARTICLE 785.

In addition to the building work for which they have been established, the branch institutes of the building trades accident associations may have transferred to them building work on railways, canals, roads, streams, dikes, and other building operations in their district if an undertaker engaged in building work not conducted as a business (art. 633, par. 2, No. 1) executes such work and if not more than six working days are actually covered by each separate piece of work.

## ARTICLE 786.

The administrative bodies of the accident association shall administer the branch institute if the constitution of the latter does not provide otherwise (art. 794).

## ARTICLE 787.

PARAGRAPH 1. The income and expenditures of the branch institute are to be accounted for separately, and the assets are also to be kept separately.

PAR. 2. A special reserve must be accumulated for the branch institute. It may not be used for the purposes of the accident association.

## ARTICLE 788.

PARAGRAPH 1. The rest of the property which is intended for the branch institute may be used for the accident association only with the approval of the Imperial Insurance Office.

PAR. 2. The approval for this purpose may only be granted if the part of the property which remains in the branch institute will probably be sufficient to cover permanently the liabilities already outstanding against the branch institute.

## ARTICLE 789.

In so far as it is necessary the accident association must advance out of its own reserve, the funds for the business operation of the branch institute.

## ARTICLE 790.

PARAGRAPH 1. The branch institute must collect for the costs of administration such sums as are actually required for its separate administration.

PAR. 2. With the approval of the Imperial Insurance Office, a lump sum may in addition be imposed on it as its share of the joint costs of administration.

## ARTICLE 791.

The branch institute must share in the advance which the accident association has to make to the Post Office Department (art. 728) according to the proportion of the compensation payments which the Post Office Department in the preceding fiscal year has paid out for the accident association and for the branch institute.

## ARTICLE 792.

PARAGRAPH 1. The general meeting of the accident association must establish for the branch institute a constitution of its own.

PAR. 2. In the discussions on this subject a representative of the Imperial Insurance Office must be present and, upon his demand, must be heard at any time.

## ARTICLE 793.

The constitution of the branch institute must contain provisions concerning—

1. The obligation to give notice on the part of the undertakers designated in article 633, paragraph 2, No. 1, who wish to insure themselves, as well as the amount and the computation of the annual earnings of these undertakers;
2. Delimitation of the rights of the directorate and of the general meeting of the accident association in the administration of the branch institute;
3. Accumulation of the reserve;
4. Drawing up, examining, and accepting of the annual balance sheet;
5. Publication of the annual accounts;
6. Amending the constitution of the branch institute.

## ARTICLE 794.

PARAGRAPH 1. The constitution of the branch institute may specify that it shall be administered through separate administrative bodies.

PAR. 2. In such case it shall also specify the seat of these administrative bodies, their composition, their districts, and the scope of their rights.

## ARTICLE 795.

The general meeting of the accident association may transfer to the directorate of the accident association the delimitation of the districts of the separate administrative bodies and the election of their members.

## ARTICLE 796.

The constitution of the branch institute and its amendments require the approval of the Imperial Insurance Office. If the approval shall be refused, the decision senate shall decide the matter; the reasons for the refusal are to be communicated. If the approval has been refused, then on appeal the Federal Council shall decide.

## ARTICLE 797.

The directorate of the accident association must publish the districts and the composition of the separate administrative bodies in the Reichsanzeiger.

## ARTICLE 798.

The following building operations shall be insured in a branch institute:

1. Those operations in which the separate operations actually consume more than six working days (longer building work) to be insured at the expense of the undertaker (art. 633, par. 2, No. 1), with the use of fixed premiums according to the premium tariff (arts. 799 to 824);
2. Those operations in which the separate operations consume not more than six working days (short building work), to be insured at the expense of the communes or of the unions designated in articles 828 to 830 whose district is covered by the accident association; the payments therefor shall be made in the form of contributions which shall annually be assessed upon these communes or unions according to the expenditure of the preceding fiscal year.

2. *Insurance at the expense of the undertakers—Premiums.*

## ARTICLE 799.

PARAGRAPH 1. For each month and not later than three days after the expiration thereof the undertakers of longer building operations must submit a report to the officials designated by the highest administrative authorities in whose district the building work is carried out concerning the following:

1. The number of working days on which operations were conducted;
2. The payments made to the insured persons therefor.

PAR. 2. The Imperial Insurance Office shall prescribe the form of this report.

## ARTICLE 800.

PARAGRAPH 1. If this report is not sent in or is incomplete, the authorities shall make it out or complete it according to their own knowledge of the conditions.

PAR. 2. For this purpose they may require those subject to this provision to give the information within a specified time under penalty of a fine up to 100 marks [\$23.80].

## ARTICLE 801.

PARAGRAPH 1. The authorities must transmit the reports within two weeks after the expiration of the quarter of the calendar year through the channels of the local insurance office to the directorate of the accident association or to the administrative body of the accident association designated by the latter.

PAR. 2. In this connection the authorities (art. 799) must certify that nothing is known to them concerning the execution of other building work in their district concerning which reports should be made.

## ARTICLE 802.

The tariff of premiums must show what unit rate must be paid in premiums for each one-half mark [11.9 cents] of computable wages or fraction thereof.

## ARTICLE 803.

If the accident association graduates the contributions in the risk tariff according to the class of building work, then the same proportion must also be used for the unit rates of the premiums.

## ARTICLE 804.

PARAGRAPH 1. The Imperial Insurance Office determines in advance the tariff of premiums at least every five years for each accident association after hearing the directorate thereof.

PAR. 2. The following factors shall be used as the basis for this purpose:

The capitalized value of the benefits which a branch will probably have to pay on account of accidents in connection with longer building operations, based on an annual average;

The supplementary charges for the creation of the reserve;

A lump sum for the costs of administration of the branch institute which are to be computed according to the annual average of the preceding tariff period after deducting the share for shorter building operations (art. 832). The Imperial Insurance Office shall specify the details in this connection.

PAR. 3. In this connection the interest on the reserve shall be deducted, provided that according to the constitution of the branch institute the interest does not accrue to the institute itself.



## ARTICLE 805.

The Imperial Insurance Office shall publish the tariff of premiums in the Reichsanzeiger and in the papers which are designated for official announcements of the highest or superior administrative authorities in whose district the tariff shall be in force.

## ARTICLE 806.

The tariff shall come into force not earlier than two weeks after its publication.

## ARTICLE 807.

After each quarter of the calendar year the directorate of the accident association shall compute on the basis of the tariff of premiums and the reports, the premiums to be paid by each undertaker and shall draw up the assessment roll.

## ARTICLE 808.

If the earnings of the insured persons per day of building work are lower than the local wage rate specified for adults in the place of employment, then the premiums shall be computed according to the latter.

## ARTICLE 809.

Extracts from the assessment roll are to be forwarded to the communes with the request that they shall collect the premiums from the undertakers in their district and within one month transmit the same to the competent administrative body of the accident association after deduction of the postal fee.

## ARTICLE 810.

PARAGRAPH 1. The accident association must grant a fee to the communes for the collection of the premiums, and the amount of this fee shall be determined by the highest administrative authorities acting in agreement with the Imperial Insurance Office.

PAR. 2. No fee shall be granted for a commune's own building operations.

## ARTICLE 811.

For those premiums which the communes can not prove are actually lost or are impossible of collection by compulsory execution, the communes are liable and must forward them in advance.

## ARTICLE 812.

PARAGRAPH 1. The extract from the assessment roll must contain statements which will enable the person required to pay the premiums to verify the computation thereof.

PAR. 2. If it is afterward shown that the report of earnings was incorrect then the same regulations shall be applicable for the premiums as in the case of contributions due the accident association (arts. 756 and 757).

## ARTICLE 813.

PARAGRAPH 1. The communal authority shall make the extract available for inspection to the persons affected, for two weeks, and shall make known the beginning of the period in the manner customary in the locality.

PAR. 2. They may also forward the extract to the persons affected instead of leaving it open for inspection.

## ARTICLE 814.

The persons required to make payments may make protest against the computation of the premiums to the directorate of the accident association or to the other competent administrative body (art. 794) within two weeks after the expiration of the period stated in article 813, paragraph 1, or after the delivery thereof; the person required to make payment, however, is obliged to pay the same for the time being. In such cases article 757, paragraph 2, and article 759, are correspondingly applicable.

## ARTICLE 815.

PARAGRAPH 1. Subject to article 814, sentence 2, the protest may only be based upon the following:

Mistakes in computation.

Incorrect statement of wages.

Incorrect use of the tariff of premiums.

The assertion that no obligation for the payment of premiums exists.

PAR. 2. The protest may not be based upon incorrect statement of earnings if the authority has itself drawn up the same or completed it because of the failure of the person obligated to make such report.

## ARTICLE 816.

Against the decision issued by the superior insurance office upon appeal, further appeal is permissible only if the appellant shows that he is not obligated to make payments of premiums.

## ARTICLE 817.

If it later develops that an amount paid without protest was collected either wholly or in part incorrectly, then articles 814 to 816 shall be correspondingly applicable.

## ARTICLE 818.

Premiums which may not be collected are, in case of need, to be covered out of the reserve of the branch institute and are to be considered in determining the next tariff of premiums.

## ARTICLE 819.

PARAGRAPH 1. The owner of a building is liable for a period of one year for the premiums and other payments of bankrupt undertakers after the obligation has been finally determined.

PAR. 2. The liability of the subcontractors takes precedence of that of the building owner.

## ARTICLE 820.

In case the building owner has given security to the accident association according to official regulations of the State authorities (art. 772), then the association is also liable for the premiums and other payments which the building owner must pay according to article 798, number 1, as an undertaker, or must pay according to article 819 on account of bankrupt undertakers.

## ARTICLE 821.

If controversies arise between the accident association (branch-institute) and building owners or subcontractors in regard to the liability, then the superior insurance office (decision chamber) shall decide; appeal to the regular courts is not permissible.

## ARTICLE 822.

The accident association may not demand on behalf of the branch institute any payments from the undertakers except premiums, fines, and costs, which are to be collected in accordance with this law.

## ARTICLE 823.

PARAGRAPH 1. If communes, unions of communes, public corporations, and other building owners regularly carry out building operations without making use of other undertakers, then upon their application a lump sum based on the average annual number of working days can be determined upon in place of the earnings according to which premiums are to be computed.

PAR. 2. At the same time the date when the premiums are to be paid must be determined.

PAR. 3. In such cases the provisions concerning monthly reports (arts. 799 to 801) and the quarterly computation and the collection of the premiums (arts. 807 to 811) are not applicable.

ARTICLE 824.

Whenever the share of the branch institute in the amounts which are to be paid to the Post Office Department arise from accident caused by longer building operations, the funds for the replacement thereof shall be taken from the available cash in premiums.

3. *Insurance at the cost of communes.*

ARTICLE 825.

PARAGRAPH 1. The funds for covering amounts paid for compensation and costs of administration which accrued to a branch institute on account of accidents in short building operations shall be raised by annual assessment upon the communes in proportion to the population in the districts included in the accident association.

PAR. 2. If the branch institute has participated in the advance of the accident association to the Post Office Department, then on this account an advance may be assessed upon the communes equal in amount to the contributions of the preceding fiscal year.

PAR. 3. Beginning with the fiscal year which follows the last census, the number of inhabitants officially determined by it shall be used as a basis.

ARTICLE 826.

An extract from the assessment roll is to be forwarded to the communes with a request for the payment of the amount determined upon within two weeks under penalty of compulsory collection.

ARTICLE 827.

PARAGRAPH 1. The extract must contain statements which will enable those obligated to make the payment to verify the computation.

PAR. 2. Protests and appeals are subject to the same provisions as in the case of the accident association (art. 757, par. 1, arts. 758, 760, and 761); however, protests are permissible only if they are based upon mistakes in computation or upon errors in the statement of the population.

ARTICLE 828.

PARAGRAPH 1. The highest administrative authority may decree that unions of communes may take the place of the communes or in specified districts several communes may jointly assume the costs which accrue to them on account of the accident insurance with the branch institute.

PAR. 2. This authority shall specify at the same time how such unions shall be represented and administered and shall specify the principles upon which the joint cost is to be apportioned to the individual communes.

ARTICLE 829.

The highest administrative authority may in addition provide that administrative districts shall take the place of the communes in the assessment and in such case how the amount assessed shall be apportioned to the individual communes.

ARTICLE 830.

PARAGRAPH 1. In so far as the highest administrative authority has not issued such regulations the communes may unite themselves on their own initiative for taking over the costs which accrue to them on account of accidents in short building operations.

PAR. 2. They shall at the same time specify how the union is to be represented and administered. The union must have the approval of the highest administrative authority.

## ARTICLE 831.

The decrees and the agreements of these unions (arts. 828 to 830) are to be communicated to the accident associations affected and to the Imperial Insurance Office.

## ARTICLE 832.

The amount of the costs of administration which are to be assessed upon the communes and the unions shall be determined in a corresponding manner as in the case of insurance at the cost of the undertaker (art. 804).

## ARTICLE 833.

Within the individual communes or unions of communes the costs arising out of the insurance of short building operations shall be collected in the same way as communal taxes.

## ARTICLE 834.

PARAGRAPH 1. The State laws or legal enactments of the individual communes or of a union of communes can specify another standard of apportionment and especially specify that the owners of land or buildings shall bear the cost.

PAR. 2. Legal provisions of this kind shall require the approval of the superior administrative authority.

## ARTICLE 835.

The communes or other unions have no claim to the reserve of the branch institute on account of the costs which accrue to them through the insurance of short building operations.

## II. BRANCH INSTITUTES FOR THE KEEPING OF RIDING ANIMALS AND CONVEYANCES.

## ARTICLE 836.

PARAGRAPH 1. Those persons shall be insured in the branch institute which is attached to an accident association of undertakers of establishments engaged in hauling or inland navigation as a business who are employed in the district of the accident association in establishments for the keeping of riding animals or conveyances not conducted as a business (art. 537, Nos. 6 and 7).

PAR. 2. The same rule applies in the case of self-insured undertakers in such activities.

PAR. 3. In the case of conveyances on water these activities shall be insured in the branch institute of the accident associations for inland navigation; in other cases in the branch institute of the accident association for hauling establishments conducted as a business: *Provided*, That the Federal Council does not enact other provisions in accordance with article 629, paragraph 2.

## ARTICLE 837.

PARAGRAPH 1. The general meeting of the accident association may provide that instead of one several branch institutes may be created for individual areas of their district.

PAR. 2. Such provisions shall require the approval of the Imperial Insurance Office; they are to be published in the Reichsanzeiger.

## ARTICLE 838.

In the branch institutes insurance at the cost of the undertakers (art. 633, par. 2, No. 2) shall be for premiums according to a tariff of premiums.

## ARTICLE 839.

PARAGRAPH 1. The undertakers must make a report for each quarter of a calendar year and not later than three days after the expiration thereof to the authority in whose district the activities are carried on, and who shall be specified by the highest administrative authority, concerning the following subjects:

1. The working days on which operations were conducted;
2. The payments made to the insured persons therefor.

PAR. 2. The Imperial Insurance Office shall prescribe the form for the report.

PAR. 3. Persons neglecting to make such reports shall be proceeded against as in the case of the branch institutes for building work (art. 800).

#### ARTICLE 840.

PARAGRAPH 1. The authority shall, within two weeks after the expiration of the quarter of the calendar year transmit these reports through the channels of the local insurance office to the directorate of the accident association or the administrative body of the accident association designated by the latter.

PAR. 2. In connection therewith the authority (art. 839) shall certify that nothing further has become known to them concerning the keeping of riding animals or vehicles (art. 537, numbers 6 and 7) not conducted as a business, in their district.

#### ARTICLE 841.

The tariff of premiums must show what unit rate of premiums must be paid for each one-half mark [11.9 cents] or fraction thereof of computable earnings.

#### ARTICLE 842.

PARAGRAPH 1. In other matters the provisions for branch institutes for building work (arts. 784, 786 to 797, 803 to 818, and 822 to 824) shall be applicable for these branch institutes.

PAR. 2. If an insurance association takes the place of a branch institute then articles 647, 648, and 736 shall be applicable to it, and the provisions for branch institutes contained in articles 803 to 818, 822 to 824, 836, paragraphs 1 and 2, and articles 838 to 841, shall be correspondingly applicable. The insurance association must also accumulate a reserve.

### SECTION EIGHT.—ADDITIONAL INSTITUTIONS.

#### ARTICLE 843.

The accident associations may create institutions for—

1. Insurance against liability for undertakers (art. 633) and persons of like status.
2. Funds providing subsidies to pensions and funds for retirement pensions for establishment officials, members of the accident associations, insured persons, officials of the accident associations, and relatives of these persons.
3. The procuring of employment for persons injured by accident.

#### ARTICLE 844.

PARAGRAPH 1. The accident association shall be the carrier of these institutions.

PAR. 2. Participation in these institutions is voluntary.

#### ARTICLE 845.

Decisions of the general meeting of the accident association:

Concerning institutions of the kind designated in article 843, Nos. 1 and 2, and the by-laws thereof, must have the approval of the Federal Council.

Institutions of the kind designated in article 843, No. 3, must have the approval of the Imperial Insurance Office.

#### ARTICLE 846.

The supervision of these institutions shall be administered by the Imperial Insurance Office.

## ARTICLE 847.

PARAGRAPH 1. Accident associations may unite to form such institutions in common.

PAR. 2. The agreement of union may only become effective at the beginning of a fiscal year.

PAR. 3. For the approval of such unions article 845 shall be correspondingly applicable.

## SECTION NINE.—ACCIDENT PREVENTION—SUPERVISION.

## I. REGULATIONS FOR ACCIDENT PREVENTION.

## ARTICLE 848.

PARAGRAPH 1. The accident associations are obliged to issue the necessary regulations concerning—

1. The arrangements and orders which the members are required to provide for the prevention of accidents in their establishments.

2. The rules of conduct which the insured persons must observe for the prevention of accidents in the establishments.

PAR. 2. Regulations for the prevention of accidents may also be issued for individual districts, branches of industry, and kinds of establishments.

PAR. 3. In these regulations it must be specified in what manner they are to be made known to the insured persons.

PAR. 4. If workmen are employed in an establishment who are not familiar with the German language then the regulations for the prevention of accidents and the decrees of the mining inspection which replace them are to be made in another language: *Provided*, That together 25 persons speak such language.

## ARTICLE 849.

If establishments belong to an accident association and these establishments because of their nature should have been apportioned to another accident association (arts. 540, 542, 631, and 632), then regulations for the prevention of accidents shall be issued for these establishments which correspond to the regulations of those accident associations to which the establishments because of their nature should have belonged.

## ARTICLE 850.

An appropriate period of time is to be allowed to the members in order to institute the arrangements prescribed for the prevention of accidents.

## ARTICLE 851.

Violations by the members of these regulations may be punished with fines up to 1,000 marks [\$238], by the insured persons with fines up to 6 marks [\$1.43].

## ARTICLE 852.

A draft of the regulations is to be transmitted to the Imperial Insurance Office. If the accident association is divided into sections, the directorates of the sections affected must in advance render an opinion upon the draft.

## ARTICLE 853.

PARAGRAPH 1. In the preparation and final decision upon these regulations the directorate of the accident association must call in representatives of the insured persons who shall have the full right to vote thereon and shall have the same number of votes as the members of the directorate participating.

PAR. 2. The same shall be correspondingly applicable for opinions in regard to protective regulations issued on the basis of article 120e, paragraph 2, of the Industrial Code.

ARTICLE 854.

The directorate of the accident association must invite the Imperial Insurance Office to the sessions in which the draft of the regulations is to be prepared and decided upon.

ARTICLE 855.

In case regulations for the prevention of accidents or protective regulations on the basis of 120e, paragraph 2, of the Industrial Code are applicable for individual sections only, then the directorates of these sections shall call in the insured persons for the purpose of securing their opinion. In such cases article 853, paragraph 1, shall be correspondingly applicable.

ARTICLE 856.

The draft of the regulations is to be communicated to the representatives of the insured persons at the same time that the invitation is sent for the meeting in which the regulations are to be discussed, or considered, or decided upon.

ARTICLE 857.

Once each year the directorate, which shall call in at the same time representatives of the insured persons (art. 853, par. 1) shall take cognizance of the reports of the technical supervisory officials and shall suggest measures which seem required for the improvement of the regulations for the prevention of accidents. In such cases article 854 is applicable.

ARTICLE 858.

PARAGRAPH 1. Representatives of the insured persons shall be elected from the associates of the superior insurance office in whose district the accident association or the section has members. Those associates of the superior insurance office only are entitled to election, however, who are competent to act as representatives of the insured persons and do not belong within the scope of the agricultural accident insurance or the navigation accident insurance.

PAR. 2. The mining accident association may in its constitution provide that the representatives of the insured persons must be elders of the miners. If this provision is enacted the representatives of the insured persons shall be elected from the elders of the miners' associations and miners' funds affected.

ARTICLE 859.

As representatives of the insured persons only those are eligible who are themselves insured according to this law against accident and are employed in an establishment which belongs to an accident association. In other respects article 12 is applicable.

ARTICLE 860.

PARAGRAPH 1. The Imperial Insurance Office shall issue the election rules.

PAR. 2. A representative of this office shall conduct the election.

ARTICLE 861.

For each representative of the insured persons a first and a second alternate must be elected. The alternate shall take his place if he is prevented from performing his duties and replace him for the remainder of his term of office if he leaves before this time, in the order according to which the election results.

ARTICLE 862.

The Imperial Insurance Office shall decide controversies concerning the validity of the election.

## ARTICLE 863.

The chairman of the directorate shall determine the allowance (art. 21) for the representatives of the insured persons.

## ARTICLE 864.

PARAGRAPH 1. The regulations for the prevention of accidents must have the approval of the Imperial Insurance Office; the decision senate shall decide thereon.

PAR. 2. The minutes of the proceedings of the directorates must accompany the application for the approval. The minutes must show how the representatives of the insured persons have voted; they must further contain an opinion of the directorates of the sections affected.

## ARTICLE 865.

PARAGRAPH 1. An opportunity must be given to the highest administrative authorities affected to express an opinion before the approval is granted.

PAR. 2. Regulations for the prevention of accidents applying to establishments which are subject to the mining inspection may be approved only if the highest administrative authority acquiesces.

## ARTICLE 866.

Even if the regulations for the prevention of accidents or parts thereof do not apply solely to individual sections, the Imperial Insurance Office may order that the directorates of the sections shall call in the representatives of the insured persons to secure their opinion before granting its approval.

## ARTICLE 867.

If the general meeting of the accident association amends the decisions which the directorate and the representatives of the insured persons have made, then the Imperial Insurance Office shall specify whether the directorate, together with the representatives of the insured persons, shall again discuss and decide upon this matter.

## ARTICLE 868.

If the Imperial Insurance Office makes its approval dependent on the amendment of the regulations, then it shall also specify whether the representatives of the insured persons shall be called in for discussion and for final decision.

## ARTICLE 869.

The directorate of the accident association must communicate the regulations to the superior administrative authorities whose districts are affected.

## ARTICLE 870.

The directorate of the accident association is authorized to determine the fines imposed upon members of the accident association, and the local insurance office (decision committee) for those imposed upon insured persons. The superior insurance office (decision chamber) shall decide upon appeal against the imposition of fines by the directorate of the accident association.

## ARTICLE 871.

Those decrees which the State officials have issued for specified branches of industry or kinds of establishments for the prevention of accidents, must, in advance, be communicated to the directorates of the accident associations or of the sections for their opinions, provided that there is no risk in the delay. In such cases the representatives of the insured persons are to be called in in the same manner as in the discussion of the regulations for the prevention of accidents.



## ARTICLE 872.

The police authorities must communicate to the accident association affected those orders which they enact for the prevention of accidents according to article 120d, paragraph 1, of the Industrial Code.

## ARTICLE 873.

Whenever the matter concerns the issuance of regulations for the prevention of accidents which at the same time are intended to assure the safe operation of railways, then articles 852 to 856, 866 to 868, 871, and 872 are not applicable.

## II. SUPERVISION.

## ARTICLE 874.

The accident associations must provide for the execution of the regulations for the prevention of accidents.

## ARTICLE 875.

The accident associations are authorized, and upon demand of the Imperial Insurance Office, are obligated to appoint technical supervisory officials in sufficient number to supervise the carrying out of the regulations for the prevention of accidents and to take cognizance of the arrangements of the establishments in so far as this is of importance in regard to membership in the accident association or for the classification in the risk classes. For such officials those persons may also be appointed who have formerly belonged to the insured establishments as workmen.

## ARTICLE 876.

In order to verify the wage reports which have been handed in, the accident associations may inspect, through their accounting officials, those books and lists from which the number of workmen and officials employed and the amount of the wages earned are computed.

## ARTICLE 877.

The business of the technical official and of the accounting official may, with the approval of the Imperial Insurance Office, be united in one person.

## ARTICLE 878.

The undertakers are obligated to permit the technical supervisory officials of their accident association to enter the place of their business during business hours and are obligated to lay before the accounting officials the books and lists (art. 876) in such place.

## ARTICLE 879.

PARAGRAPH 1. The Imperial Insurance Office may force the undertakers to comply with their duties arising out of article 878 upon the application of any person participating in the supervision, by the imposition of fines up to 300 marks [\$71.40].

PAR. 2. The superior insurance office decides finally upon appeal.

## ARTICLE 880.

The undertaker may demand special experts instead of the technical supervisory officials if he fears, on account of the latter's inspection, some damage to his trade secrets or other injury to his business activities.

## ARTICLE 881.

PARAGRAPH 1. In such cases the undertaker must, as soon as possible, designate to the directorate of the accident association several persons who are competent and ready to inspect the establishment at his expense and to give the accident association the necessary information.

PAR. 2. The Imperial Insurance Office shall decide, upon request, if the parties can not agree in the matter.

## ARTICLE 882.

The local insurance office of the place of residence shall put under oath the members of the administrative bodies of the accident associations, the technical supervisory and accounting officials, as well as the special experts, to keep secret all matters which become known to them through the supervision of the establishments or through the examination of the books or lists, as well as not to make an unauthorized use of business and trade secrets.

## ARTICLE 883.

PARAGRAPH 1. The directorate of the accidents association must report the name and residence of the technical supervisory and accounting officials to the superior administrative authorities affected.

PAR. 2. The directorate must make reports to the Imperial Insurance Office concerning the activities of the technical supervisory officials and, upon request, to the State supervisory officials (art. 139b of the Industrial Code).

## ARTICLE 884.

PARAGRAPH 1. If the supervisory official of the accident association has received information concerning orders which the State officials have issued for the prevention of accidents, then he may not give orders in conflict therewith.

PAR. 2. If, however, he believes a conflicting order necessary or considers an order of the State officials inconsistent with a regulation for the prevention of accidents, he shall report thereon to the directorate of the accident association. The latter may then call upon the superior officers of the State officials.

## ARTICLE 885.

PARAGRAPH 1. If the State supervisory official considers orders of the accident association as conflicting or inconsistent with the regulations for the prevention of accidents, then the official shall communicate the fact to the directorate of the accident association.

PAR. 2. If the directorate considers the protest unfounded, it may call upon the superior officers of the State officials.

## ARTICLE 886.

The directorate of the accident association must transmit to the Imperial Insurance Office information concerning all proceedings which concern differences of opinion between the two sets of supervisory officials.

## ARTICLE 887.

If on account of the negligence of an undertaker the accident association incurs cash expenditures on account of the supervision of his establishment or on account of the examination of his books and lists then the directorate may charge these costs to the undertaker and in addition impose upon him fines up to 100 marks [\$23.80]. The costs shall also be collected in the same manner as communal taxes.

## ARTICLE 888.

With the consent of the association and under an agreement as to the costs the local insurance office may assist the accident association in regard to the supervision of those receiving pensions. In this matter the decision committee shall decide. If the committee declines then on appeal the superior insurance office shall decide finally.

## ARTICLE 889.

The undertakers are required to permit the permanent members of the Imperial Insurance Office authorized by the Imperial Insurance Office to enter their places of work during the hours of operation, in order to determine the administration and effect of the regulations for the prevention of accidents which have been issued (art.

848). The Imperial Insurance Office may enforce the compliance of this obligation up to 300 marks [\$71.40].

II. SPECIAL PROVISIONS FOR BUILDING OPERATIONS AND FOR THE KEEPING OF RIDING ANIMALS AND CONVEYANCES.

ARTICLE 890.

PARAGRAPH 1. Regulations for the prevention of accidents are also to be issued for activities in connection with building operations not carried on as a business and for the keeping of riding animals and conveyances not carried on as a business (art. 537, Nos. 6 and 7).

PAR. 2. That accident association is competent in whose branch institute the persons employed in such activities are insured. If they are insured in an insurance association, then the latter is competent.

ARTICLE 891.

PARAGRAPH 1. Subject to the following provisions, articles 848 to 889 shall be applicable also for these activities.

PAR. 2. In case of violations of the regulations for the prevention of accidents, fines up to 100 marks [\$23.80] may be imposed on the undertakers of short building operations.

PAR. 3. In an insurance association, the representatives of the insured persons are elected from the associates of the superior insurance office over whose districts the accident association or section extends; in this case article 858, paragraph 1, sentence 2, shall be applicable.

SECTION TEN.—ESTABLISHMENTS AND ACTIVITIES FOR THE ACCOUNT OF PUBLIC BODIES.

ARTICLE 892.

PARAGRAPH 1. If the Empire or a federal State is a carrier of the insurance, then it shall take the place of the accident association and assume the rights and duties of the administrative bodies of the accident association through administrative authorities. For the military administration, the latter shall be specified by the highest military administrative authority of the division of the army, for the other administrations of the Empire, the imperial chancellor, and for the State administration, the highest administrative authority.

PAR. 2. The same rule shall be applicable for communes, unions of communes, and other public bodies which are carriers of the insurance. The highest administrative authority shall specify the officials for the execution hereof.

ARTICLE 893.

PARAGRAPH 1. The Imperial Insurance Office shall be informed concerning the administrative authorities.

PAR. 2. The administrative authorities already authorized shall continue to act.

ARTICLE 894.

If the Empire, the federal State, the commune, the union of communes, or another public corporation, is a carrier of the insurance, then the following articles are not applicable:

The provisions relating to changes in the status of the accident association (arts. 635 to 648);

The provisions in regard to the constitution of the accident association contained in articles 649 to 720;

The regulations concerning supervision (arts. 722 to 725);

The provisions concerning the collection of funds as well as concerning the procedure in regard to assessments and collections (arts. 731 to 776);

The provisions in regard to transferring amounts to the Post Office Department in articles 781 and 782;

The provisions concerning branch institutes (arts. 783 to 842);

The provisions in regard to additional institutions (arts. 843 to 847);

The provisions in regard to accident prevention and supervision in articles 848 to 887, and 889 to 891;

The penal provisions in articles 908 to 910, 912 and 913.

#### ARTICLE 895.

Whoever designates the administrative authorities shall also issue the administrative regulations in order to execute the provisions of this section.

#### ARTICLE 896.

The administrative provisions may extend the insurance obligation to establishment officials with annual earnings of more than 5,000 marks [\$1,190], in so far as the latter are not exempt from insurance according to article 554.

#### ARTICLE 897.

PARAGRAPH 1. If the administrative authority in order to prevent accidents wants to issue regulations with penal provisions covering insured persons, then not less than three representatives of the insured persons shall be called in for discussion and advice.

PAR. 2. A representative of the authority shall conduct the discussion; he may not be the immediate official superior of the representatives just mentioned.

PAR. 3. In so far as the matter concerns the issuing of regulations which are intended to assure the safe operation of railways, the above is not applicable.

### SECTION ELEVEN.—LIABILITY OF UNDERTAKERS AND THEIR REPRESENTATIVES.

#### I. LIABILITY TO INJURED PERSONS AND SURVIVORS.

#### ARTICLE 898.

The undertaker (art. 633) is liable to injured persons and their survivors (art. 588 to 594) even if they have no claim to a pension, according to other legal provisions for the compensation of injuries which an accident of the kind designated in articles 544 and 546 has caused, only if it has been determined by the penal decision that he has purposely caused the accident. The liability of the undertaker is then limited to the amount by which such compensation exceeds that of the accident insurance.

#### ARTICLE 899.

The same rule is applicable in the case of compensation claims of injured persons and their survivors against the authorized agents or representatives of the establishment and against the overseers of the establishment and of the workmen.

#### ARTICLE 900.

The claim may also be made valid if on account of the death, absence, or of a cause other than that which rests in the person of the one obligated, no penal decision has been delivered.

#### ARTICLE 901.

PARAGRAPH 1. If the regular court must decide in regard to such claims, then the court is bound by the decision which has been delivered in a procedure according to this law, as to the following points:

Whether an accident which entitles to compensation has occurred;  
To what extent and by what carrier of the insurance, the compensation is to be granted.

PAR. 2. The regular court shall suspend its procedure until the decision in the procedure according to this law has been rendered. This, however, does not apply to arrests and acts for the time being.

## ARTICLE 902.

Instead of the person entitled to the compensation, the undertakers or persons of like status according to article 899, from whom the injured person or his survivors demand compensation for injuries, may apply for the determination of the compensation according to this law, and may also make use of legal remedies. The lapse of time limits which, without their fault, have expired, shall not act against them; this shall not apply for time limits of procedure in so far as the undertaker or person of like status according to article 899 shall himself conduct the procedure.

## II. LIABILITY TO ACCIDENT ASSOCIATIONS, SICK FUNDS, ETC.

## ARTICLE 903.

PARAGRAPH 1. If it is determined by a penal decision that the undertaker or person of like status according to article 899 has caused the accident either purposely or negligently through failure to observe such care to which they are especially obligated on account of their office, occupation, or industry, then they are liable for everything which the communes, poor law unions, sick funds, miners' associations, miners' funds, substitute funds, and funeral or other relief funds have had to expend because of the accident according to the law or constitution. Instead of the pension the capitalized value thereof may be demanded.

PAR. 2. They are also liable—

If it has been determined by the penal decision that in the direction or execution of a building operation they have acted contrary to the generally recognized rules in building work;

If the accident has been caused through such violations.

PAR. 3. The provisions of article 900 in regard to liability without determination by penal decision are also applicable for these claims.

PAR. 4. Undertakers and persons of equal status according to article 899 are liable to the accident association for its expenditures, even if there has been no determination by penal decision.

## ARTICLE 904.

PARAGRAPH 1. For accidents caused by the persons named below, the following bodies are liable as undertakers, if the persons so named have performed duties belonging to them; the bodies liable and the persons for whom liability attaches are—

1. A stock company, mutual insurance association, a registered cooperative society, a guild, or other legal person, for a member of the directorate;
2. A company with limited liability, for a business director;
3. Any other business corporation, for a partner who is authorized to conduct the business;
4. In the case of the liquidation of a business corporation, a mutual insurance association, a registered cooperative society, a guild, or other legal person, for one of the liquidators.

PAR. 2. This provision is correspondingly applicable for the Empire, federal States, communes, unions of communes, as well as other corporations, foundations, and institutions created by public law.

## ARTICLE 905.

PARAGRAPH 1. If the accident has been brought about negligently through failure to observe that care, to which the undertaker and persons of equal status (art. 899) because of their office, occupation,

or industry are especially obligated, then the general meeting of the accident association may refrain from making a claim for the accident association.

PAB. 2. The constitution may transfer this right to the directorate.

#### ARTICLE 906.

PARAGRAPH 1. If the directorate desires to make a claim for reimbursement it shall communicate in writing its decision to the person liable to make reimbursement. The latter may then appeal within one month to the general meeting of the accident association.

PAB. 2. If the person to make reimbursement appeals within this time to the general meeting of the accident association, suit may be instituted only after the decision of the latter, and in other cases only after the expiration of one month with a notification.

#### ARTICLE 907.

PARAGRAPH 1. Such claims lapse in 18 months after the day on which the penal decision has become effective. In those cases in which no penal decision is required they lapse within one year after the legal and effective determination of the obligation to compensation on the part of the accident association, but at the latest within 5 years after the accident. If the general meeting of the accident association is appealed to, such action shall act as a stay to the expiration. A new period of expiration may only then begin, if the general meeting of the accident association has made a decision or if the appeal has been decided otherwise.

PAB. 2. The provisions of article 901, paragraph 1, in regard to the regular courts being bound to follow the decision, are also applicable for these claims.

### SECTION TWELVE.—PENAL PROVISIONS.

#### ARTICLE 908.

Under a proviso that the undertaker was aware of the inaccuracy of the statements or must have known under the circumstances, the directorate of the accident association may impose fines upon employers up to 500 marks [\$119]—

1. If on the basis of the law or of the constitution they have transmitted reports for the computation of contributions or premiums or for the classification in risk classes which contained actually incorrect statements;
2. If in the report of the establishment (art. 653) a later date is stated as the time of the opening of the establishment or of the beginning of the insurance obligation than that date on which the establishment was opened or became subject to the insurance.

#### ARTICLE 909.

The directorate of the accident association may in addition impose fines not to exceed 300 marks [\$71.40] on the undertakers if they do not comply in due time with the obligation—

1. To report the establishment and changes in the establishment, as also to post placards in the establishment;
2. To keep and preserve wage lists (wage books);
3. To transmit wage reports and the reports for the computation of premiums;
4. To comply with the provisions of the constitution in regard to the shutting down of an establishment and to a change of the undertaker.

#### ARTICLE 910.

PARAGRAPH 1. The superior insurance office (decision chamber) shall decide finally upon appeals against the determination of fines by the directorate of the accident associations.

**PAR. 2.** The decision chamber shall decide, though not finally, in the cases mentioned in articles 870 and 887 as well as of article 891 in connection with these provisions.

**ARTICLE 911.**

Undertakers or their employees who purposely deduct contributions or premiums, either wholly or partly, from earnings or deliberately bring about the same, shall be punished with fines up to 300 marks [\$71.40] or with imprisonment, if a severer penalty has not been incurred according to other legal provisions.

**ARTICLE 912.**

Whenever on the basis of this law the undertaker is liable to penalties the following persons shall be considered as having the same status:

1. The members of the directorate, if a stock company, mutual insurance association, registered cooperative society, guild, or other legal person is an undertaker;
2. The business manager, if an association with limited liability is an undertaker;
3. All copartners personally liable, provided that they are not excluded from representation, if another form of business corporation is the undertaker;
4. The legal representatives of undertakers not legally competent to transact business, or partially so, as well as liquidators of a business corporation, a mutual insurance association, a registered cooperative society, a guild, or any other legal person.

**ARTICLE 913.**

**PARAGRAPH 1.** The undertaker may transfer the duties laid upon him on the basis of this law to business managers; in so far as the matter does not relate to arrangements founded on regulations for the prevention of accidents, he may also transfer the duties to a supervisory staff or other officials of his establishment.

**PAR. 2.** If such representatives act in violation of those regulations which impose a penalty upon the undertaker, then the penalty shall apply to them. In addition to them the employer may be penalized in the following cases:

1. If the violation has taken place with his knowledge;
2. If in the selection or supervision of his representatives he has not observed the required care in the transaction; in these cases no other penalty than a fine may be imposed upon the undertaker.

**PAR. 3.** If the fines which have been imposed by the directorate of the accident association can not be collected from the representatives, then the employer is liable in their place. His liability is to be specified in fixing the penalty.

**ARTICLE 914.**

In the case of insured persons, the fines imposed upon them shall be paid into the sick fund if the person penalized belongs at the time of the violation to a sick fund; otherwise, it shall be paid into the general local sick fund of his place of employment, and where such fund does not exist, then into the rural sick fund. The same shall also apply to fines which administrative authorities impose upon insured persons (art. 897).

## PART TWO.

## AGRICULTURAL ACCIDENT INSURANCE.

## SECTION ONE.—SCOPE OF THE INSURANCE.

## ARTICLE 915.

PARAGRAPH 1. Agricultural establishments (art. 161) are subject to the accident insurance.

PAR. 2. The Imperial Insurance Office may specify what ranches of industry are considered as agricultural establishments.

## ARTICLE 916.

PARAGRAPH 1. If the agricultural undertaker carries on work on his own land or on the land of others for his own agricultural establishment without transferring this work to another undertaker, then the following shall be considered as parts of the agricultural establishment:

Current repairs to buildings which are used in agricultural operations;

The cultivation of the ground and other building work for the establishment, especially the making or maintenance of roads, dams, canals, and watercourses for this purpose.

PAR. 2. If because of public and lawful obligation, the agricultural undertaker carries on work for the communes for the making or maintenance of buildings, roads, dams, canals, and watercourses, as an undertaker, and these obligations rest upon him as an agriculturalist, then they are to be considered as part of his agricultural establishment.

## ARTICLE 917.

PARAGRAPH 1. In the meaning of article 915, paragraph 1, gardening and the care of parks and gardens as well as cemetery establishments shall be considered as agricultural establishments in so far as they are not subject to industrial accident insurance.

PAR. 2. Small home gardens, and ornamental gardens which are not worked regularly, and to a considerable extent with a special labor force and whose products are consumed principally by the household are not considered as agricultural establishments.

## ARTICLE 918.

The insurance is applicable also to undertakings which the agricultural undertaker carries on in addition to his farm but in economic dependence thereon (agricultural subsidiary establishments). In this class belong especially those establishments which either wholly or principally are intended for the following purposes:

1. To prepare or work up products of the farm of the undertaker;
2. To supply the needs of his farm;
3. To procure or to work up the products of the earth from his land.

## ARTICLE 919.

Article 918 is not applicable to—

1. Mines, salt works, concentrating works, shipyards, metallurgical and metal-working plants, yards for the preparation of building materials as well as to establishments which manufacture or work up as a business either explosives or explosive articles;
2. Establishments which the Imperial Insurance Office has declared to have the status of factories—  
Because of their considerable scope;  
Because of their special equipment with machinery;  
Because of the number of their industrial workmen.



## ARTICLE 920.

Establishments or activities in inland navigation and rafting are only included in the insurance of the principal agricultural establishments if they do not extend beyond the scope of local traffic.

## ARTICLE 921.

Those activities which because of their nature are subject to the industrial accident insurance in a branch institute or an insurance association shall be insured in that agricultural accident association to which the undertaker having the activities of the same kind belongs: *Provided*, That these other activities are of greater extent than the former.

## ARTICLE 922.

Article 542 is applicable to the assignment of agricultural and industrial establishments of the same undertaker to the accident association.

## ARTICLE 923.

PARAGRAPH 1. In establishments which according to articles 915 to 922 are subject to the insurance, the following persons shall be insured against accidents (industrial accidents): *Provided*, That they are employed in these establishments:

1. Workmen;
2. Establishment officials whose annual earnings as compensation do not exceed 5,000 marks [\$1,190].

PAR. 2. Helpers, journeymen, and apprentices are considered as workmen.

PAR. 3. In distinction from the usual agricultural workmen, that person shall be considered as an artisan who requires special technical skill for his position. This applies to foresters, gardeners, gardeners' helpers, millers, brickmakers, wheelwrights, blacksmiths, carpenters, distillers, engineers, firemen, as well as to helpers and journeymen who have gone through a period of technical training and education. The persons made subject to the agricultural accident insurance according to article 922 shall also be considered as artisans. The constitution shall determine who in addition to these shall be considered as artisans.

PAR. 4. Acts contrary to regulations do not exclude the assumption of a trade accident.

## ARTICLE 924.

The insurance shall include household and other service which the insured persons while principally employed in the establishment or in the insured activities (arts. 920 and 921) are called on to perform by the undertaker or his authorized agent.

## ARTICLE 925.

The constitution may extend this obligation to the following:

1. Undertakers whose annual earnings do not exceed 3,000 marks [\$714] or who regularly employ for compensation either no one or at most two persons subject to the insurance;
2. Establishment officials whose annual earnings as compensation exceed 5,000 marks [\$1,190].

## ARTICLE 926.

The constitution may extend the insurance of undertakers who are principally employed in agriculture to such household activities as are connected with agriculture.

## ARTICLE 927.

PARAGRAPH 1. Undertakers may insure themselves against the consequences of trade accidents if they do not have more than 3,000 marks [\$714] of annual earnings or if they regularly employ for

## 1374 WORKMEN'S COMPENSATION AND INSURANCE.

compensation either no one or at most two persons subject to the insurance. In this case, article 926 is also applicable.

PAR. 2. The constitution may admit them also to self-insurance if they have more than 3,000 marks [\$714] of annual earnings or if they regularly employ for compensation at least three persons subject to the insurance.

### ARTICLE 928.

The provisions of articles 925 to 927 in regard to the insurance of undertakers are also applicable to their consorts employed in the establishments.

### ARTICLE 929.

The following articles from the industrial accident insurance are correspondingly applicable:

1. Article 552 for the insurance of other employees in the establishment and of strangers in the establishment.
2. Article 553 in regard to the consequences of nonpunctual payment of contributions in the case of voluntary insurance.
3. Article 554 for the insurance of military persons and of officials.

## SECTION TWO.—BENEFITS OF THE INSURANCE.

### ARTICLE 930.

Articles 555 to 562 from the industrial accident insurance are correspondingly applicable concerning the object of the insurance.

### ARTICLE 931.

PARAGRAPH 1. In the computation of the pensions for establishment officials and artisans, articles 563 to 566 and 568 are applicable in regard to the annual earnings.

PAR. 2. In addition articles 932 to 935 and 941 are applicable in this connection.

### ARTICLE 932.

If the customary number of working-days in the year is so small that those employed in the establishment regularly perform work elsewhere for compensation, then in the cases mentioned in articles 565 and 566, for the number of days short of 300 working-days the local wage rate which at the time of the accident has been determined upon (arts. 149 to 152) for the place of employment of the injured person shall be added to the amount computed according to articles 565 or 566.

### ARTICLE 933.

Articles 564 to 566, 568, and 932 are to be correspondingly applied if the annual earnings are composed of specified amounts for at least weekly periods.

### ARTICLE 934.

If the annual earnings of the establishment officials or artisans do not amount to 300 times the local wage rate (art. 932), then the annual earnings shall be assumed to be 300 times the latter.

### ARTICLE 935.

In the case of injured young persons the pension, which shall be computed according to the local wage, shall be fixed in that age class in which the injured person belonged at the time of the accident, and is to be correspondingly increased as he reaches the higher age class.

### ARTICLE 936.

PARAGRAPH 1. In the case of workmen who are not included in articles 931 to 935, the compensation shall be fixed according to the annual earnings which the agricultural workmen at the time of the accident received on an average through agriculture and other gainful activities in the place of employment.

**PAR. 2.** The average annual earnings shall be determined by the superior insurance office after a hearing of the local insurance offices; the earnings shall be determined separately for men and women, for injured persons under 16 years of age, for those from 16 to 21 years of age, and for those who are over 21 years of age. Injured persons under 16 years of age (young persons) may, according to article 150, paragraph 2, be still further separated into youths and children. The separation may also be made for agriculture and for forestry.

**PAR. 3.** Before rendering its opinion, the local insurance office shall give a hearing to representatives of the injured persons engaged principally in agriculture.

#### ARTICLE 937.

In the case of injured young persons, the compensation shall be fixed in the first place according to the average annual earnings for that age class in which the accident was sustained, and is to be correspondingly increased as the injured persons reach the higher age class.

#### ARTICLE 938.

The pensions for undertakers, as well as for other persons employed in the establishment and strangers in the establishment (art. 929, No. 1), shall be based on the average annual earnings for agricultural workmen (art. 936) which at the time of the accident had been determined for the seat of the establishment. The constitution may provide otherwise.

#### ARTICLE 939.

In so far as the annual earnings exceed 1,800 marks [\$428.40] the excess shall in every case be computed at only one-third.

#### ARTICLE 940.

If the accident occurs to a person already permanently partially disabled whose compensation is to be computed according to the average annual earnings (art. 936), then of the latter only that part shall be used as a basis which corresponds to the percentage of the earning capacity before the accident.

#### ARTICLE 941.

For those persons already permanently partially disabled, the local wage shall be considered as only that fraction of the local wage which corresponds to the degree of the earning capacity before the accident.

#### ARTICLE 942.

**PARAGRAPH 1.** The commune must grant sick benefits according to article 182 to an injured workman during the first 13 weeks after the accident. In the place of the sick benefits, the commune may grant hospital treatment and house money according to articles 184 and 186. With the consent of the injured person it may also grant care according to article 185, paragraph 1, and deduct therefor not more than one-fourth of the pecuniary sick benefit. The local wage of the place of employment (par. 2) shall be used as a basic wage.

**PAR. 2.** The commune upon whom the obligation rests is that of the place of employment (arts. 153 to 156); the seat of the establishment, however, is not to be considered as the place of employment if the injured person was employed in a forestry establishment which extended over the districts of several communes.

#### ARTICLE 943.

**PARAGRAPH 1.** The commune is not compelled to grant sick benefits according to article 942 in the following cases:

1. In so far as the injured person has a claim for similar relief on the basis of the sickness insurance or other legal provisions;

2. If he is exempt from insurance on account of benefits which are of value equal to those of the sickness insurance;

3. So long as he remains in a foreign country.

PAR. 2. If the parties obligated in the first place do not provide the sick benefits to the injured person then the commune shall take over the same. The expenditures of the commune on this account must be reimbursed by those upon whom the obligation rests.

PAR. 3. In such cases reimbursement for sick care, and also for treatment in the hospital, shall be three-eighths of the basic wage according to which the pecuniary sick benefit of the person entitled thereto is computed, and for maintenance in the hospital one-half of the basic wage. If no other basic wage is specified, then the local wage of the place of employment shall be used (art. 942, par. 2).

#### ARTICLE 944.

PARAGRAPH 1. Upon demand of the commune, the sick benefits must be taken over by the rural sick fund, and in the absence of such, by the general local sick fund for the place of residence or of abode.

PAR. 2. The commune must reimburse the expenditures thereof. In such cases article 943, paragraph 3, is applicable if a higher expenditure is not proved.

#### ARTICLE 945.

PARAGRAPH 1. The accident association may itself take over the course of treatment (art. 942).

PAR. 2. The commune, or subject to articles 1513 and 1516, the parties otherwise obligated (art. 943, par. 1, Nos. 1 and 2) must reimburse the accident association in so far as the injured person could claim benefits from them. In such cases article 943, paragraph 3, is applicable.

#### ARTICLE 946.

PARAGRAPH 1. If, in the case of injured persons who are not insured against sickness, either on the basis of the imperial insurance or in a miners' sick fund and also have no claim for sick benefits according to article 942, it is to be feared that an accident compensation will have to be granted, then the accident association may, even before the expiration of the first 13 weeks after the accident, inaugurate a course of treatment in order to remove the consequences of the accident or to alleviate the same.

PAR. 2. The association may place the injured person in a medical institution. In such cases article 597, paragraphs 2 to 4, are applicable.

PAR. 3. With his consent the association may grant an injured person a course of treatment according to article 185, paragraph 1.

PAR. 4. The injured person may demand from the accident association proper reimbursement for the earnings which he lost on account of the course of treatment.

#### ARTICLE 947.

The accident association may determine the consequences of the accident within the first 13 weeks, even without granting the injured person a course of treatment; article 581, paragraph 1, is here correspondingly applicable.

#### ARTICLE 948.

Articles 582, 583, paragraph 1, and 584 are applicable in the case of granting accident compensation before the expiration of the 13 weeks for the two cases mentioned herewith, and in such cases article 583, paragraph 1, is also applicable for the benefits of the commune (art. 942); these are—

In the case of the transfer of the claim for pecuniary sick benefit;

In the case of the accident association being bound by the attitude taken by the carrier of the sickness insurance.

## ARTICLE 949.

PARAGRAPH 1. If the matter does not concern a claim for reimbursement, the local insurance office decides finally in controversies between the commune and the sick fund on account of the taking over of the sick benefits (art. 944).

PAR. 2. Controversies concerning claims for reimbursement arising out of articles 943 to 945 shall be decided by judgment procedure.

## ARTICLE 950.

PARAGRAPH 1. Articles 586 to 596 of the industrial accident insurance are applicable as regards compensation for damages in fatal cases.

PAR. 2. However, the annual earnings shall be fixed according to the provisions which are applicable in agricultural accident insurance in the case of physical injury but with the exception of articles 940 and 941. Article 587 is applicable only if the compensation is not computed according to the average annual earnings already determined (art. 936).

## ARTICLE 951.

The accident association may grant treatment in a medical institution in place of medical treatment and compensation (art. 930 in connection with art. 558). In such cases articles 597, paragraphs 2 to 5, and 598 are applicable.

## ARTICLE 952.

In addition the provisions of the industrial accident insurance are applicable in regard to the following:

House care (*Hauspflege*) (art. 599);

Special relief in case of placing in a medical institution (*Heilanstalt*) (art. 602);

Inauguration of a new course of medical treatment (arts. 603 and 604);

Change of the medical institution (art. 605);

Injury to the injured person due to improper conduct in violation of orders relating to the course of treatment (art. 606);

Placing of the pensioner in a home for invalids (*Invalidenhaus*) or similar institution (art. 607).

## ARTICLE 953.

PARAGRAPH 1. With the approval of the higher administrative authority, the communes or unions of communes, may by legal enactment specify that pensions up to two-thirds of their amount shall not be paid in cash, but in kind. This applies only to pensioners who reside in the district: *Provided*, That these persons or those supporting them receive no wages as agricultural workers; but according to local custom are paid either wholly or partly in kind: *And provided*, That a mutual agreement is reached concerning the payment in kind instead of the pensions.

PAR. 2. The value of the commodities shall be determined by the higher administrative authority according to the average prices.

## ARTICLE 954.

PARAGRAPH 1. The payments in kind shall be granted by the commune of the place of residence. The claim to the compensation shall be transferred to the commune to the extent of the value of the payments in kind.

PAR. 2. The local insurance office (decision committee) shall decide controversies between the commune and the beneficiary. The superior insurance office decides finally upon appeal.

PAR. 3. If the claim to the pension has been transferred to the commune finally then the accident association shall notify the post office department.

## ARTICLE 955.

In addition, the provisions of industrial accident insurance are applicable concerning the following:

The new determination of the pension on account of changes in conditions (arts. 608 to 611);

The maturity of benefits and duration of receipt of pension (arts. 612 and 613);

The right to benefits after the death of the beneficiary (art. 614);

The suspension of compensation (art. 615);

Settlements in the form of capital sums (arts. 616 to 618);

The relinquishment of a claim for reimbursement and legal rights (arts. 619 and 620);

The transferring, assigning, execution of the claims, and deductions from the claims (arts. 621 and 622).

## SECTION THREE.—CARRIERS OF THE INSURANCE.

## I. ACCIDENT ASSOCIATIONS AND OTHER CARRIERS OF THE INSURANCE.

## ARTICLE 956.

PARAGRAPH 1. The accident associations as carriers of the insurance shall include the undertakers of the insured establishments.

PAR. 2. The accident association shall be formed according to territorial districts. They shall include all establishments of the branches of industry in the district for which they have been created.

PAR. 3. Those accident associations which have been created according to article 18 of the law of May 5, 1886 (Reichs-Gesetzblatt, p. 132) concerning accident and sickness insurance of persons employed in agricultural and forestry establishments shall retain their present status subject to the changes permissible according to article 960.

## ARTICLE 957.

PARAGRAPH 1. The Empire or a Federal State is a carrier of the insurance if the establishment is conducted for its account, unless the establishments according to article 109 of the law mentioned in article 956 belong to the accident associations created for them.

PAR. 2. Article 625, paragraphs 2 to 5, of the industrial accident insurance is applicable for the subsequent entry into the accident association, rewithdrawal, and re-entrance therein.

## ARTICLE 958.

The undertaker of an establishment is the person for whose account the establishment is conducted.

## ARTICLE 959.

For establishments which comprise parts, or subsidiary establishments of various branches of industry, article 631, paragraph 1, of the industrial accident insurance applies correspondingly—

For the apportionment of several establishments of the same undertaker to one accident association, article 632 of the industrial accident insurance is applicable;

For the compensation of accidents in establishments of third parties, article 634 of the industrial accident insurance is applicable.

## II. CHANGES IN THE STATUS OF THE ACCIDENT ASSOCIATION.

## ARTICLE 960.

PARAGRAPH 1. For changes in the status of the accident associations, articles 635 to 646 of the industrial accident insurance are applicable.

PAR. 2. If the Federal Council gives its approval, the constitution for the new accident association shall be decided upon according to articles 20, 21, and 24, paragraph 3, of the law of May 5, 1886 (Reichs-Gesetzblatt, p. 132).

#### ARTICLE 961.

The same provisions as in the case of the industrial accident insurance (arts. 647 and 648) apply in case of the dissolution of the accident associations.

### SECTION FOUR.—ORGANIZATION.

#### I. MEMBERSHIP AND RIGHT TO VOTE.

##### ARTICLE 962.

Every undertaker is a member of the accident association if his establishment belongs to the branches of industry covered by it, and the establishment has its seat in the district of the association.

##### ARTICLE 963.

PARAGRAPH 1. All the pieces of ground of an undertaker, all the agricultural operations of which are served by common farm buildings, shall be considered as a single establishment.

PAR. 2. If the agricultural establishment extends over the districts of several communes, then it shall have its seat in that commune where the common farm buildings or the buildings serving its principal purpose are located. The undertaker may make an agreement with the communes concerning a different seat for the establishment.

##### ARTICLE 964.

PARAGRAPH 1. Several pieces of ground of a forestry establishment, belonging to one undertaker which are subject to the same immediate business management (forestry district), shall be considered as a single establishment.

PAR. 2. Pieces of ground of forestry establishments of several undertakers shall be considered as separate establishments even if together they are subject to the same business management.

PAR. 3. If a forestry establishment extends over a district of several communes, then its seat shall be considered to be in the locality where the largest part of the forestry area is located. The undertaker may agree with the communes in regard to a different seat for the establishment.

##### ARTICLE 965.

The membership begins with the opening of the establishment or with the beginning of its insurance obligation; the beginning of the membership of the Empire and the federal States is regulated according to article 957.

##### ARTICLE 966.

If the members or their legal representatives do not possess civic rights, they shall have no right to vote.

#### II. REGISTRATION OF THE ESTABLISHMENTS.

##### ARTICLE 967.

PARAGRAPH 1. Each newly opened establishment must be reported by the communal authority to the directorate of the accident association through the channels of the local insurance office.

PAR. 2. The directorate shall examine whether the establishment belongs to the accident association.

PAR. 3. If the directorate refuses the membership application, it shall communicate the fact to the local insurance office, and the latter may appeal for a decision of the Imperial Insurance Office; upon application of the accident association such step must be taken.

### III. CHANGES IN THE UNDERTAKERS—CHANGES IN THE ESTABLISHMENT AND IN ITS MEMBERSHIP IN THE ACCIDENT ASSOCIATION.

#### ARTICLE 968.

The undertaker must report to the directorate of the accident association each change in the person for whose account the establishment is conducted within the period specified in the constitution. The undertaker remains liable for the contributions up to the end of the fiscal year in which the change was reported without thereby releasing his successor from liability.

#### ARTICLE 969.

Articles 665 to 673 of the industrial accident insurance are correspondingly applicable in regard to the undertaker's duty of reporting changes in the establishment which are of importance for his membership in the accident association; the same articles apply in regard to the transfer and dissolution of the establishment as well as to the transfer of the burden of accidents and of a part of the reserves.

#### ARTICLE 970.

PARAGRAPH 1. The obligation to report changes in the establishment which are of importance in connection with the assessment and the procedure in this connection, are to be regulated in the constitution.

PAR. 2. Articles 999 and 1000 are correspondingly applicable in opposing the decision which the accident association has issued on the basis of changes reported or which it has issued of its own accord.

### IV. CONSTITUTION.

#### ARTICLE 971.

The accident associations shall regulate their internal administration and order of business by a constitution which shall be decided upon at the general meeting of the accident association.

#### ARTICLE 972.

The constitution must specify—

1. The name, the seat, and the district of the accident association;
2. The composition, rights, and duties of the directorate;
3. The form of the declaration of the decisions of the directorate, as well as its signature on behalf of the accident association; the manner of making decisions in the directorate and its representation as to third parties;
4. The creation of the committee of the accident association to decide upon protests (arts. 1000 and 1023);
5. The composition and calling of the general meeting of the accident association and its method of arriving at decisions;
6. The right to vote of members and the examination of their credentials;
7. Representation of the accident association as against the directorate;
8. The rates for loss of earnings and for traveling expenses which are to be granted to the representatives of the insured persons (art. 21);
9. The standard for the assessment of the contributions and providing that the latter are not assessed like taxes, the procedure in valuation and classification.
10. The procedure in case of the opening of new establishments, changes in establishments and changes in the person of the undertaker;



11. The consequences of shutting down the establishment or of a change in the person of the undertaker, especially as to the guaranteeing of his contributions, if he shuts down the establishment;
12. The drawing up, examining, and accepting the annual balance sheet.
13. The administrative action relating to the issuance of the regulations containing provisions for the prevention of accidents and for the supervision of the establishments;
14. The procedure in reporting for membership and separation from membership of the insured undertakers, and other persons insured according to article 925, No. 2, and article 929, No. 1, as well as the amount and ascertainment of the annual earnings of the undertaker;
15. The method of publishing notices;
16. The provisions as to the amendment of the constitution;
17. Who shall be considered as artisans.

## ARTICLE 973.

The provisions of the industrial accident insurance are applicable in regard to the following subjects:

Divisions into sections and appointment of district agents (arts. 678, Nos. 2 and 3, and art. 679);

Power of the directorate of the accident association to impose penalties (art. 680);

Drawing up the constitution (arts. 681 to 683).

## ARTICLE 974.

PARAGRAPH 1. If the constitution has been approved, the directorate of the accident association must publish the name and seat of the accident association and the districts of the sections in the *Reichsanzeiger* or, if the district of the accident association does not extend beyond the territory of a federal State, in the official gazette of the highest administrative authority.

PAR. 2. The same rule applies in the case of changes.

## V. ADMINISTRATIVE BODIES OF THE ACCIDENT ASSOCIATION.

## ARTICLE 975.

PARAGRAPH 1. Articles 685 to 687 and 689 of the industrial accident insurance are applicable as regards the administrative bodies of the accident association.

PAR. 2. The Imperial Insurance Office is, however, not authorized, in the place of the accident association, to issue regulations for the prevention of accidents nor to appoint technical supervisory officials.

## ARTICLE 976.

PARAGRAPH 1. The general meeting of the accident association is composed of representatives of the members.

PAR. 2. The general meeting must be called into session at least once a year.

## ARTICLE 977.

PARAGRAPH 1. For a specified time the general meeting may transfer the auditing and acceptance of the annual balance sheet and the business of the directorate either wholly or partly to autonomous bodies. In such cases the agreement of the latter and approval of the highest administrative authority is necessary.

PAR. 2. The rights and duties of the administrative bodies of the accident association shall then be transferred to the autonomous bodies.

## VI. EMPLOYEES OF THE ASSOCIATIONS.

## ARTICLE 978.

The provisions of the industrial accident insurance (arts. 690 to 705) are applicable as regards employees of the accident association who are not State or communal officials and, in the case of the transfer of business, to salaried business managers.

## VII. FORMATION OF THE RISK CLASSES.

## ARTICLE 979.

Articles 706 to 710 and 712 of the industrial accident insurance shall be applicable as regards the formation of risk classes (arts. 990 to 1004 and 1008). Accident associations whose establishments show but little difference in regard to the risk of accident may decide not to make use of risk classes. Such decision shall require the approval of the Imperial Insurance Office. It may be withdrawn if a list of accidents for the separate branches of the industry discloses important differences.

## VIII. DIVISION AND JOINT CARRYING OF THE BURDEN.

## ARTICLE 980.

PARAGRAPH 1. The constitution may provide that the sections shall defray the compensation up to three-fourths for accidents which occur in their districts.

PAR. 2. The amounts which thereby become a burden upon the sections shall be assessed upon their members according to the amount of their contributions.

## ARTICLE 981.

If the assessments are computed on the basis of the land tax, and thereby the sections are burdened with more than double the amount which is actually expended for them in the form of compensations and costs of administration, then the general meeting of the accident association may decide to apportion the excess upon all the sections according to the land tax.

## ARTICLE 982.

The provisions of the industrial accident insurance (arts. 714 to 716) are applicable for the joint carrying of the burden.

## IX. ADMINISTRATION OF THE ASSETS.

## ARTICLE 983.

The Imperial Insurance Office may issue regulations regarding the safe-keeping of securities in so far as the State officials or autonomous bodies do not conduct the business.

## ARTICLE 984.

The provisions of the industrial accident insurance (arts. 718 to 721) are applicable in regard to the following:

The investment of the assets;

The reports on the business and accounting operations.

## SECTION FIVE.—SUPERVISION.

## ARTICLE 985.

PARAGRAPH 1. Articles 722 and 723 of the industrial accident insurance are applicable with regard to the supervision of the accident associations.

PAR. 2. This supervision not extend to the service conditions of State authorities or autonomous bodies which administer accident association.

## ARTICLE 986.

For accident associations subject to the supervision of the State insurance office, the latter takes the place of the Imperial Insurance Office in regard to the following matters:

Controversies in regard to the assignment of several establishments to one accident association, according to articles 922 and 959 in connection with article 632;

- Controversies between the accident association and the Empire or a federal State in regard to the distribution of the assets in the cases mentioned in article 957 in connection with article 625, paragraph 5;
- Changes in the status of the accident associations (arts. 960 and 961);
- Membership of the establishment in the accident association and changes in the membership (arts. 967 and 969 in connection with art. 673, pars. 1 and 3);
- Approval and drawing up of the constitution (art. 973);
- Taking over the business of the accident association (art. 975);
- Service regulations for the employees of the accident association as well as controversies regarding service conditions (art. 978);
- Risk tariffs (art. 979);
- Joint carrying of the cost of compensation (art. 982);
- Administration of the assets of the accident association in the cases mentioned in articles 983 and 984 in combination with articles 718, 719, paragraph 1, and 720;
- Collecting the contributions (arts. 1011 in connection with art. 736, pars. 2 and 3) as well as the accumulation of the reserve (art. 1013);
- Covering the claims of the post office department (art. 1028 in connection with arts. 781 and 782);
- Additional institutions of the accident association (art. 1029);
- Accident prevention and supervision in the cases mentioned in articles 1030 in connection with articles 848 to 889 and 890, paragraph 1, but excluding the cases mentioned in article 883;
- Reporting of the administrative authorities (art. 1033 in connection with art. 893).

## ARTICLE 987.

PARAGRAPH 1. If the matter concerns the cases mentioned below, then the Imperial Insurance Office shall decide, if an accident association which is subordinated to another State insurance office or to the Imperial Insurance Office, is affected. The State insurance office shall then transmit the documents to the Imperial Insurance Office. These cases are the following:

- Controversies in regard to the assignment of several establishments to one accident association according to articles 922 and 959 in connection with article 632;
- Changes in the status of the accident association in the cases mentioned in article 960;
- Membership of the establishment in the accident association and changes in the membership (arts. 967 and 969 in connection with art. 673, pars. 1 and 3);
- Joint carrying of the cost of compensation (art. 982).

PAB. 2. If the matter concerns any additional common institutions of several accident associations (art. 1029), then the Imperial Insurance Office shall remain competent for these additional institutions if all of the accident associations participating are not subordinated to the same State insurance office.

## SECTION SIX.—PAYMENT OF THE COMPENSATION—RAISING OF THE FUNDS.

## I. PAYMENTS THROUGH THE POST OFFICE DEPARTMENT.

## ARTICLE 988.

The provisions of the industrial accident insurance (arts. 726 to 729) are applicable in regard to the payments through the Post Office Department.

## II. RAISING OF THE FUNDS.

1. *General provisions.*

## ARTICLE 989.

The accident associations must raise the funds to cover their expenditures by means of membership contributions which shall cover the expenditures of the preceding fiscal year.

2. *Standard of the labor need and of the risk classes.*

## ARTICLE 990.

The contributions shall be assessed according to the following:

The estimated average need for human labor (labor need) and its value in accordance with this law.

The earnings of the establishment officials and artisans as well as the annual earnings of undertakers in so far as the services of such insured persons are not already included in the estimate.

The extent of the risk of accident (risk classes).

## ARTICLE 991.

PARAGRAPH 1. For each undertaker the annual average number of working days shall be estimated which are required to operate his establishment; in this connection, the number of workmen in the establishment and the duration of their employment shall be considered.

PAR. 2. The constitution may provide that household and other service shall be reckoned separately in this connection.

## ARTICLE 992.

PARAGRAPH 1. In making the estimates, the list of undertakers, which was drawn up on the creation of the accident association (art. 34 of the law of May 5, 1886, Reichs-Gesetzblatt, p. 132) or drawn up at a later time, is to be used as a basis.

PAR. 2. Changes in the establishment are to be considered.

## ARTICLE 993.

PARAGRAPH 1. Permanently employed workmen are to be reckoned as having 300 working days, while female employees are to be computed on the basis of the proportion of their earnings to the average annual earnings of males.

PAR. 2. The services of establishment officials, artisans, and undertakers and their relatives not insured, are not to be included in the estimate.

PAR. 3. The constitution may make other provisions.

## ARTICLE 994.

In the case of establishments in which at the most five insured persons are employed regularly on full time, the constitution may specify uniform contributions according to a standard which it shall determine.

## ARTICLE 995.

The administrative bodies of the accident association shall arrange for the estimates and shall classify the establishments in risk classes. The constitution must specify the details in this connection.

## ARTICLE 996.

PARAGRAPH 1. The communal authority may compel the undertakers to give information concerning the conditions which are decisive for the estimates of the labor need by the imposition of fines up to 100 marks [\$23.80].

PAR. 2. If the employer does not supply the information in due time or completely, then the communal authority shall correct the list according to their own knowledge.

## ARTICLE 997.

Within two weeks the undertakers must furnish to the administrative bodies of the accident association upon demand such further information concerning conditions in their establishment and of their workmen as is required for the estimate and classification.

## ARTICLE 998.

PARAGRAPH 1. The accident association shall communicate to the communal authorities lists containing the following:

The establishments belonging to it in the commune;

The important principles and the result of the estimate and classification.

PAR. 2. The communal authority must hold these lists open for inspection of persons affected for two weeks, and shall make known the beginning of the period in the manner customary in the locality.

## ARTICLE 999.

Within one month after the inspection period the undertakers may make protest to the administrative bodies of the accident association which have made the estimate or classification on the following points:

Because their establishment has been included in the list or has not been included;

Because the labor need has been estimated or the establishment has been classified, or against the manner thereof.

## ARTICLE 1000.

PARAGRAPH 1. The administrative bodies of the accident association shall communicate the decision in writing to the undertaker in regard to his protest.

PAR. 2. The undertaker may further protest to the committee of the accident association (art. 972, number 4) and may make an appeal against the decision of the latter to the superior insurance office.

## ARTICLE 1001.

In making the first estimate and classification, the members of the committee of the accident association may not participate.

## ARTICLE 1002.

Within the period in which the risk tariff is to be verified the classification and estimate are also to be verified (art. 979 in connection with art. 708).

## ARTICLE 1003.

Even before the regular re-examination the accident association may again estimate the labor need of an establishment or reclassify the establishment if it develops that the reports of the undertaker were incorrect.

## ARTICLE 1004.

For the new estimates and new classifications, articles 990 to 1001 are correspondingly applicable.

### 3. *Standard of the tax rate.*

## ARTICLE 1005.

PARAGRAPH 1. If the State legislation does not exclude the relatives of the undertaker from the insurance and the standard of the labor need and the risk classes is unsuitable, then the constitution may provide that the contributions of the members of the accident association may be collected through supplementary charges to the direct State or communal taxes.

PAR. 2. For the adoption of such a provision a majority of at least two-thirds in the general meeting of the accident association is required. The constitution must in such a case also specify the man-

ner in which those members are to be charged for the cost of the accident association who do not have to pay the taxes used as a basis, either for their whole establishment or a part thereof.

#### ARTICLE 1006.

The constitution may specify the uniform minimum contributions which shall not be greater than 1 mark [23.8 cents] annually, or, if the undertakers themselves are insured, or are included in the insurance (arts. 925 to 928), not more than 2 marks [47.6 cents] annually.

#### ARTICLE 1007.

PARAGRAPH 1. Special supplementary charges shall be collected together with the contributions on account of establishment officials and artisans. The constitution shall specify the details in this connection. It must also regulate notification of employment and threaten violations with penalties.

PAR. 2. The same applies in the case of undertakers if, for the computation of their pensions, an amount higher than the average annual earnings of agricultural workmen is used as a basis.

#### ARTICLE 1008.

PARAGRAPH 1. Contributions are to be graded according to the accident risk in the case of establishments mentioned in article 917, agricultural subsidiary establishments and other establishments which, according to their nature, should be subject to the industrial accident insurance and, in addition, the activities of the kind mentioned in article 921.

PAR. 2. The constitution shall regulate the prerequisites in this connection as well as the amount of these contributions and the procedure.

#### ARTICLE 1009.

PARAGRAPH 1. If the constitution specifies a land tax as the standard, then the constitution may impose the payment of the supplementary charges upon those persons who by law are subject to the land tax for the parcels of ground of establishments belonging to the association or would be subject to it if the parcels of ground had not been exempt from the tax.

PAR. 2. If, accordingly, a person other than the undertaker pays the contribution, then the latter must refund the payment.

PAR. 3. In controversies concerning such repayments the local insurance office shall decide in whose district the establishment subject to the insurance has its seat. Upon appeal the superior insurance office decides finally.

#### 4. *Other standards.*

#### ARTICLE 1010.

PARAGRAPH 1. If the prerequisites mentioned in article 1005, paragraph 1, are present the constitution may provide for another suitable standard for the collection of the contributions, such, for instance, as the following:

The kind of cultivation;

Area in connection with the land tax;

Net return which the ground as such, together with the buildings and outfit belonging thereto and serving the same purpose according to its previous economic use under the customary system of farming, may be made to yield continuously on an average;

The productive value which is obtained by multiplying the above return by 25.

PAR. 2. Articles 996 to 1009 are here correspondingly applicable. The constitution shall specify the details.

*5. General provisions.*

## ARTICLE 1011.

The provisions of the industrial accident insurance are applicable as to the following:

As to the purpose for which contributions may be collected and the funds may be applied (art. 736);

As to advances upon contributions as well as to advance payment of contributions (arts. 737 to 739).

## ARTICLE 1012.

PARAGRAPH 1. Undertakers of small establishments with slight accident risk, which employ for compensation persons subject to the insurance only exceptionally, may be either wholly or partly exempt from contributions by the constitution which shall at the same time specify the procedure for the ascertaining of such undertakers.

PAR. 2. With the approval of the highest administrative authority, the general meeting of the accident association may also enact the above.

PAR. 3. In controversies between the accident association and the undertaker in regard to exemption from the insurance, the superior insurance office shall decide finally.

## ARTICLE 1013.

PARAGRAPH 1. The accident associations must accumulate a reserve.

PAR. 2. Until the reserve equals twice the amount of the annual expenditures each year, 2 per cent shall be added to the current assessment. The constitution may provide for a higher amount.

PAR. 3. Articles 745 to 747 of the industrial accident insurance apply correspondingly as regards the reserve.

## III. PROCEDURE IN ASSESSMENTS AND COLLECTIONS.

## ARTICLE 1014.

Article 749, paragraph 1, of the industrial accident insurance applies correspondingly to the assessment of the expenditures upon members.

## ARTICLE 1015.

When the assessment of the contributions is based on the tax, the tax for that period shall be used as a basis, for which the contributions are assessed.

## ARTICLE 1016.

PARAGRAPH 1. When the assessment of the contribution is made according to the labor need and risk classes, each member who has in the preceding year employed establishment officials or artisans, must transmit a report to the directorate within six weeks after the expiration of the fiscal year, stating the amount actually received by each of them during this time or how much is to be included on his account.

PAR. 2. The constitution may permit a summary wage list as described in article 750, paragraph 3.

PAR. 3. The directorates of the accident association or of the sections shall themselves draw up or complete the wage list for members who do not transmit the same in due time or completely.

## ARTICLE 1017.

PARAGRAPH 1. In the computation of the contributions, the following shall be used:

For an establishment official and artisan, that compensation which he is actually receiving in the establishment or which is to be reckoned for him;

For one working day of a workman, the three hundredth part of the average annual earnings as determined for adult males over 21 years of age at the seat of the establishment.

For the undertaker, the same annual earnings if the constitution does not provide otherwise.

PAR. 2. In so far as the average annual earnings exceed 1,800 marks [\$428.40], the excess shall be computed at only one-third.

#### ARTICLE 1018.

If in making the estimates the services of establishment officials and artisans are included, according to the constitution (art. 993, par. 3), then only that amount of the earnings of these insured persons shall be included which is in excess of the average annual earnings of the workman.

#### ARTICLE 1019.

In the cases mentioned in articles 994 and 1006 with consideration of the uniform contributions, the directorate of the accident association shall compute the contributions which are apportioned to each undertaker for the purpose of covering the total annual expenditure, and shall draw up an assessment roll.

#### ARTICLE 1020.

PARAGRAPH 1. Extracts from the assessment roll are to be transmitted to each communal authority for the members belonging to its district with the request to collect the contributions after deduction of the collected advances and to send the whole sum within four weeks to the directorate of the accident association.

PAR. 2. The accident association shall on this account pay a compensation, the amount of which shall be determined by the highest administrative authority.

#### ARTICLE 1021.

PARAGRAPH 1. The extract from the assessment roll must contain statements which will permit the person obligated to make the payments to verify the computation of the contribution.

PAR. 2. The communal authority shall make the extract available to the parties affected for inspection for a period of two weeks, and shall make known the beginning of this period in the manner customary in the locality. Instead of leaving the extract open for inspection, it may be transmitted to the parties affected.

PAR. 3. If the constitution provides that voluntary insurance shall be discontinued if contributions have not been paid in due time, and if it provides that a new application for membership shall be without effect until arrears of contributions have been paid (art. 929, number 2), then attention shall be called thereto either in the extract or in the communication.

#### ARTICLE 1022.

Articles 755 and 756 of the industrial accident insurance are applicable in regard to a new determination of the contribution after the extract from the assessment roll has been communicated. A new determination is also permissible if on account of incorrect statements of the undertaker, the labor need at a later time has had to be newly estimated (art. 1003).

#### ARTICLE 1023.

PARAGRAPH 1. Within two weeks after the expiration of the period or after communication has been made (art. 1021, par. 2) the undertaker may make protest to the directorate of the accident association against the computation of the contribution; but he remains obligated to make a provisional payment. In such cases article 757, paragraph 2, shall be applicable.



**PAR. 2.** The classification and the estimate may, however, not be contested. Further procedure shall be regulated by article 1000. In such cases article 759 shall be correspondingly applicable in regard to the appeal.

**ARTICLE 1024.**

If after the protest, appeal, or complaint, the contribution is reduced, then article 760 is applicable concerning the covering of difference and the balancing of the excess payment.

**ARTICLE 1025.**

If it later develops that a contribution paid without protest was either wholly or partly collected without right, then articles 1023 and 1024 shall be correspondingly applicable.

**ARTICLE 1026.**

If the commune can not prove that the contribution was not actually collected or that compulsory collection was without result, then it shall be liable for the contributions and must forward them at the same time.

**ARTICLE 1027.**

Article 762 is correspondingly applicable in regard to the raising of contributions which can not be collected. Such contributions are to be reimbursed to the commune which has already forwarded them.

**IV. TRANSFERRING AMOUNTS TO THE POST OFFICE DEPARTMENTS.**

**ARTICLE 1028.**

The provisions of the industrial accident insurance are applicable as regards the transmission of the amounts to the Post Office Department (arts. 777 to 782).

**SECTION SEVEN.—ADDITIONAL INSTITUTIONS.**

**ARTICLE 1029.**

The provisions of the industrial accident insurance (arts. 843 to 847) are applicable as regards additional institutions of the accident association.

**SECTION EIGHT.—ACCIDENT PREVENTION—SUPERVISION.**

**ARTICLE 1030.**

**PARAGRAPH 1.** Articles 848 to 857, 859 to 889, 890, paragraph 1, and 891, paragraph 2, of the industrial accident insurance are correspondingly applicable as regards prevention of accidents and supervision.

**PAR. 2.** The representatives of the insured persons shall be elected by the insurance representatives of those local insurance offices whose district is covered by the accident association or the section. However, only such insurance representatives of the local insurance offices are eligible as have been selected as representatives of the insured persons and who belong within the sphere of the agricultural insurance.

**ARTICLE 1031.**

**PARAGRAPH 1.** If State authorities or autonomous bodies administer the accident associations, they shall summon for discussion and for decision as to regulations for the prevention of accidents a like number of employers and representatives of the insured persons.

**PAR. 2.** The representatives of the employers shall be selected by lot, drawn by the chairman from the number of the employers' associates engaged in agriculture who are attached to the superior insurance offices of the district of the accident association, and the selection shall be made in a session of the autonomous bodies or of the authority.

PAR. 3. For these representatives articles 861 and 863 shall be correspondingly applicable; for them and their substitutes, the provisions of articles 16 to 21 and 24 shall also be applicable as far as concerns representatives of the employers.

#### ARTICLE 1032.

Undertakers are required to permit the members of the administrative bodies of the accident association who have been designated for this purpose by their accident association to enter their places of work during working hours. Article 879 is here correspondingly applicable.

### SECTION NINE.—ESTABLISHMENTS OF THE EMPIRE AND OF THE STATES.

#### ARTICLE 1033.

PARAGRAPH 1. If the Empire or a federal State is a carrier of the insurance, then articles 892, 893, and 895 to 897 of the industrial accident insurance shall be applicable.

PAR. 2. In this case, the following provisions of the agricultural accident insurance shall not apply:

The provisions in regard to changes in the status of the accident associations (arts. 960 and 961);

The provisions concerning the constitution contained in articles 962 to 983 and 984 in connection with articles 718 to 720;

The provisions in regard to supervision (arts. 985 to 987);

The provisions relating to raising funds as well as concerning the procedure of assessment and collection (arts. 989 to 1027);

Article 1028 in connection with articles 781 and 782 of the provisions in regard to transmitting amounts to the Post Office Department;

The provisions in regard to additional institutions (art. 1029);

Article 1030 in connection with articles 848 to 887, 889, 890, paragraph 1, and 891, paragraph 2, as well as articles 1031 and 1032 of the provisions in regard to accident prevention and inspection;

Articles 1043, 1044, and 1045 in connection with articles 910, 912, and 913 of the penal provisions.

PAR. 3. In place of the constitution, the administrative regulations shall specify who shall be considered as artisans.

### SECTION TEN.—REGULATION BY STATE LEGISLATION.

#### ARTICLE 1034.

The State legislation may specify how far and under what conditions the two steps named below may be taken. Additional provisions of the constitution as regards the first case below are thereby not excluded. These two cases are—

1. How far and under what conditions undertakers, including consorts, may be insured;
2. How far and under what conditions other relatives of the undertaker shall be exempt from insurance.

#### ARTICLE 1035.

PARAGRAPH 1. The State legislation may also either wholly or partly exempt undertakers from the payment of contributions on account of the slight risk of accidents are the small scope of the establishment, and shall specify the procedure for the ascertaining of such undertakers.

PAR. 2. In controversies between the accident association and the undertaker in regard to such exemption, the superior insurance office shall decide finally.

## ARTICLE 1036.

The State legislation may also prescribe higher reserves (art. 1013).

## ARTICLE 1037.

The State legislation may regulate the following five subjects at variance with the provisions of this law specified below. The following are these five subjects:

- The delimitation of the accident associations;
- The constitution and administration of associations;
- The procedure in case of change in the establishment;
- The standard for the assessment of contributions;
- The procedure in assessment and collection.

The provisions which may be departed from are the following:

- Articles 5 to 7 in regard to administrative bodies;
- Articles 12, 13, 14, paragraph 2, sentence 2, articles 17 to 21, 23, and 24 in regard to honorary offices;
- Articles 28, paragraphs 1 and 2, and article 29, paragraphs 1 and 2, in regard to assets;
- Article 967 in regard to reporting of establishments;
- Articles 968, 969, in connection with articles 665, 666, 667, paragraph 2, and articles 669 to 672 as well as article 970 in regard to change of the undertaker, to reporting changes in the establishment and in regard to additional procedure;
- Articles 971 to 974 in regard to the constitution.
- Article 975, paragraph 1, in connection with articles 685, 686, Nos. 3 and 4, and 687 to 689, and also article 976, paragraph 1, and article 977, paragraph 1, in regard to the administrative bodies of the accident association;
- Article 978 in regard to employees of the accident association;
- Article 979 in regard to the formation of risk classes.
- Articles 980 to 982 in regard to dividing and the joint carrying of the cost;
- Articles 990 to 1010 in regard to raising the funds;
- Articles 1014 to 1027 in regard to the procedure in assessment and collection.

In addition the State legislation may change various provisions of this law and enact the following:

- Designate the administrative bodies which shall administer the accident association and take cognizance of the rights and duties which this law imposes upon directorates;
- Transfer the investigation of the circumstances of the accident to the local insurance office.

## ARTICLE 1038.

If the State legislation contains provisions based upon the authorization of article 1037, it shall also specify the following:

1. The representation of the accident association in the investigation of accidents (art. 1562).
2. The administrative body with which the claim for compensation shall be filed (arts. 1546, 1548, 1584, and 1585) and which shall determine the compensation and issue the decision or final decision thereon (arts. 1568, 1569, 1583, and 1606).
3. The administration of the assets (art. 25, par. 2, arts. 26, 27, 983 and 984 in connection with arts. 718 to 720).
4. The persons, excepting the technical supervisory officials and the special experts (art. 1030 in connection with arts. 875, 880, 881), who are subject to the penal provisions concerning the violation of trade secrets (arts. 142 to 144).

## ARTICLE 1039.

If by any State legislation use is made of the right to delimit accident associations, then in the case of changes in the status of the accident associations the highest administrative authority shall take the place of the Federal Council if the establishments affected all have their seat in the federal State.

## ARTICLE 1040.

PARAGRAPH 1. If an accident association created under the State law is to be dissolved on account of insolvency, and its establishments apportioned to other accident associations whose establishments all have their seats in the federal State, then the highest administrative authority of that State shall be competent as regards dissolution and apportionment.

PAR. 2. Upon dissolution of the accident association its rights and duties are assumed by the federal State.

## ARTICLE 1041.

PARAGRAPH 1. If a federal State has joined its territory, either wholly or partly, to the accident association of a second State with the consent thereof, and the latter has made use of the right granted in article 1037, then for this accident association the provisions of the State laws of the designated second State shall be applicable.

PAR. 2. If the State included has also made use of its rights under article 1037, then the provisions of the federal State in which the accident association has its seat shall be applicable. The two State governments shall agree on the seat of the association.

PAR. 3. If the Federal Council dissolves an accident association of this kind as being insolvent, then the rights and duties of the association shall be transferred to the Federal States affected according to the proportion of the contributions which were paid in the last fiscal year.

PAR. 4. If the federal States affected can not agree on these matters, the Federal Council shall decide the matter upon appeal.

## SECTION ELEVEN.—LIABILITY OF UNDERTAKERS AND THEIR REPRESENTATIVES.

## ARTICLE 1042.

PARAGRAPH 1. The provisions of the industrial accident insurance (arts. 898 to 907) are applicable as regards the liability of undertakers and their representatives.

PAR. 2. Claims for reimbursement for damages suffered through accident, which the insured person has according to law for the first 13 weeks after the accident, are retained if the injured person does not have a claim to the benefits of sickness insurance from a sick fund, a miners' sick fund, or a substitute fund, or is exempt from insurance because of being entitled to benefits of equal value.

## SECTION TWELVE.—PENAL PROVISIONS.

## ARTICLE 1043.

PARAGRAPH 1. The directorate of the accident association may impose upon undertakers fines up to 500 marks [\$119] if the four classes of reports specified below contain statements of facts which the undertakers knew to be incorrect or under the circumstances must have been aware of the fact. These are the following:

1. Lists of salaries or wages which must be handed in according to article 1016 for the purpose of the assessment of the contribution;
2. Explanations which must be transmitted to the competent officials of the accident association for the purpose of apportioning the establishment to the risk classes;

3. Reports which they have furnished according to article 996 for estimating the labor need or according to article 997 in regard to conditions of their establishment and their labor force;
4. Reports or notices which they have furnished according to article 968 concerning the change of the undertaker or according to articles 969 and 970 concerning changes in the establishment.

**PAR. 2.** Paragraph 1 is correspondingly applicable as regards reports, explanations, and information which undertakers must give for the apportionment of the contributions under the standard specified in article 1010.

#### ARTICLE 1044.

The directorate of an accident association may in addition impose fines up to 300 marks [\$71.40] upon undertakers if they do not in due time comply with the following obligations:

1. Transmit the statements designated in article 1043, paragraph 1, numbers 1, 3, and 4 and paragraph 2;
2. Comply with the provisions of the constitution in regard to the shutting down of establishments and changes of undertakers.

#### ARTICLE 1045.

The following provisions of the industrial accident insurance are correspondingly applicable:

- Article 910 concerning the protest against the determination of fines by the directorates of the accident association;
- Article 911 concerning the deduction of the contributions from the earnings;
- Article 912 in regard to the punishment of persons of equal status with undertakers;
- Article 913 concerning penalties in the case of transfer of the obligations of undertakers;
- Article 914 concerning the funds to which the fines accrue.

### PART THREE.

## NAVIGATION ACCIDENT ASSOCIATION.

### SECTION ONE.—SCOPE OF THE INSURANCE.

#### ARTICLE 1046.

The following persons are insured against accident:

1. If they are employed upon seagoing vessels as masters, seamen, engineers, stewards, or belonging to the ship's crew in another capacity (seamen); masters are included, however, only if they are employed for a compensation;
2. If they are employed upon German seagoing vessels in inland harbors or upon inland canals or streams without belonging to the ship's crew, provided they are not otherwise insured against accident upon the basis of the imperial insurance;
3. If they are employed in inland establishments conducting floating docks and similar operations as well as in German establishments for pilot service, for the rescue or salvage of men or commodities in case of shipwreck, for the watching, lighting, or maintenance of waters for the service of marine traffic.

#### ARTICLE 1047.

A sea voyage (art. 163) includes the following:

1. A voyage upon the sea outside of the limits specified in article 1 of the administrative provisions of November 10, 1899,

in connection with article 25 of the flag law of June 22, 1899;

2. Voyages upon bays, inclosed bays (*Haffen*), and shoals of the sea.

#### ARTICLE 1048.

Voyages upon other waters which are connected with the sea are not considered as sea voyages, even if made by seagoing vessels.

#### ARTICLE 1049.

The crews of vessels which are used for fishing of the kind described in article 1048, within the limits determined by the Federal Council, are also insured against accident.

#### ARTICLE 1050.

If it is doubtful whether establishments are subject to the navigation accident insurance, then the Imperial Insurance Office shall decide thereon after a hearing of the directorate of the accident association.

#### ARTICLE 1051.

The navigation accident insurance is not applicable to establishments engaged in marine navigation and other establishments included in articles 1046 and 1049 which, because they are important parts of another establishment, are subject to the industrial accident insurance (art. 540, No. 2).

#### ARTICLE 1052.

PARAGRAPH 1. The insurance applies to accidents during operations, inclusive of accidents which occur during these operations and which are caused by natural events (industrial accidents).

PAR. 2. Acts contrary to regulations do not exclude the assumption of a trade accident.

#### ARTICLE 1053.

The insurance is in force for the time from the beginning to the end of the service relation, including transportation from land to vessel and from vessel to land.

#### ARTICLE 1054.

The insurance also covers the following:

1. Accidents during operations to persons insured according to articles 1046 and 1049 sustained upon a vessel subject to the navigation accident insurance upon which they are employed, but to whose crew they do not belong.
2. Accidents to German seamen during free return transportation, or transportation upon German seagoing vessels which is granted to them in accordance with the Commercial Code or Navigation Code (Reichsgesetzblatt, 1902, p. 175), or according to the law relating to the obligation of vessels in the merchant marine as to returning seamen to home ports (Reichsgesetzblatt, 1902, p. 212).

#### ARTICLE 1055.

In the case of change of flag, the service relation is regarded as ended on that date on which the insured person may ask for his discharge. The change of flag is to be communicated to the insured persons. The communication must be entered in the ship's log by the captain, and the insured persons must attest the entry.

#### ARTICLE 1056.

Excluded from insurance are accidents sustained by the insured person in the following cases:

1. While he is not on board contrary to orders;
2. While he is on land on leave for his private affairs.

## ARTICLE 1057.

The insurance also includes the following:

1. Household and other service to which the insured persons who are principally engaged in the establishment have been assigned by the undertaker or by his representatives.
2. Service rendered by insured persons in connection with the rescue or salvage of men or goods.

## ARTICLE 1058.

The undertakers of industrial establishments are also insured in the following cases:

1. In sea navigation, if the seagoing vessel has not more than 50 cubic meters [65.40 cubic yards] total capacity, and has neither the appurtenances of larger seagoing vessels nor is arranged to be driven by steam or other machine power.
2. Fishing on the high seas with vessels which the Federal Council has not already, in accordance with article 1, paragraph 5, of the law of July 13, 1887 (*Reichsgesetzblatt*, p. 329) placed under the accident association as being steamers engaged in deep-sea fishing or as being her-ring luggers.
3. Fishing of the kind designated in article 1049.

**PAR. 2.** The insurance obligation of the undertaker exists only if he belongs to the crew of the vessel, and in the establishment there is regularly employed for compensation either no one or at the most two persons subject to the insurance.

## ARTICLE 1059.

The constitution may also extend the insurance obligation to ship-owners who belong to the crew of the vessel, and when in the establishment there is regularly employed for compensation either no one or at the most two persons subject to the insurance.

## ARTICLE 1060.

The proprietor of a seagoing vessel is the shipowner (*Reeder*), or if a shipowning firm (*Reederei*) exists, then the firm itself (art. 489 of the Commercial Code).

## ARTICLE 1061.

Such undertakers of insured establishments which are not already insured according to these provisions, and pilots who carry on their business on their own account, can insure themselves against the consequences of industrial accidents.

## ARTICLE 1062.

The provisions of articles 1058, 1059, and 1061 in regard to the insurance of the undertaker are also applicable for consorts employed in the establishment.

## ARTICLE 1063.

The insurance covers the annual earnings up to 5,000 marks [\$1,190], inclusive. The constitution may extend the insurance beyond this sum.

## ARTICLE 1064.

The following articles of the industrial accident insurance are correspondingly applicable:

1. Article 552 for the insurance of other employees in the establishment and strangers in the establishment.
2. Article 553 for the consequences of failure to make prompt payment of contributions in the case of voluntary insurance.
3. Article 554 for the insurance of persons in military service and of officials.

## SECTION TWO.—BENEFITS OF THE INSURANCE.

## ARTICLE 1065.

PARAGRAPH 1. Articles 555 to 562 of the industrial accident insurance are correspondingly applicable as regards the benefits of the insurance; contraventions of article 93, paragraphs 2 and 3, and of articles 95 to 97 of the Navigation Code are not considered as misdemeanors in the meaning of article 557, paragraph 1.

PAR. 2. In so far as there is a legal obligation of the shipowner to provide sick relief, then the obligation to provide compensation by the accident association shall begin when the obligation of the shipowner ends.

## ARTICLE 1066.

In computing the pension of insured persons who belong to the accident association (art. 1118) the annual earnings are to be determined according to articles 1067 to 1079, 1081 and 1082.

## ARTICLE 1067.

With the exception of persons employed in establishments engaged in towing and lighterage, the average rate of monthly cash wages (*Heuer*) at the time of the accident granted on the mustering in or registering, multiplied by 11, shall be considered as the annual earnings of persons who belong to the crew of seagoing vessels; to this amount shall be added two-fifths of the average cash value of the board provided for able-bodied seamen on seagoing vessels.

## ARTICLE 1068.

PARAGRAPH 1. The average monthly rate shall be determined by the imperial chancellor after a hearing of the highest administrative authority on a uniform basis for the whole German coast, and it shall be fixed according to the wage rates which able-bodied seamen on German vessels have received during the last three calendar years in which the German naval forces have not been mobilized.

PAR. 2. For those classes of the ship's crew who in addition to the wage or salary have a regular supplementary income, the average money value of such income shall also be included in fixing the average rate above referred to.

## ARTICLE 1069.

The average rate shall be established separately for able-bodied seamen, steersmen, engineers, and other ship's officers, and for masters. It may also be graded further according to the type of the vessels or according to classes of the ship's crew.

## ARTICLE 1070.

In the case of persons of the ship's crew for whom no special average has been determined, three-fourths of the rate determined for able-bodied seamen shall be used.

## ARTICLE 1071.

The determination of the average rates shall be re-examined at least every five years.

## ARTICLE 1072. /

After the expiration of the seventeenth year of life, the pension is to be increased to the average rate for ordinary seamen, and after the expiration of the nineteenth year of life to the rate for able-bodied seamen: *Provided*, That it had been computed according to a lower rate average.

## ARTICLE 1073.

In so far as the annual earnings exceed 1,800 marks [\$428.40] the excess shall be computed at only one-third.



## ARTICLE 1074.

PARAGRAPH 1. Articles 563 to 566 and 568 of the industrial accident insurance are applicable as concerns the annual earnings of the other persons insured according to article 1046 who belong to the accident association.

PAR. 2. In this connection, articles 1075 to 1078 and 1082 are also applicable.

## ARTICLE 1075.

If the customary number of working days of operation in the year is so small that those employed in the establishment regularly perform work elsewhere for compensation in addition, then in the cases specified in articles 565 and 566 the number of working days necessary to make up the 300 shall be added to the amount computed according to article 565 or 566, using the local wages which at the time of the accident have been determined for the place of employment of the insured person (arts. 149 to 152).

## ARTICLE 1076.

Articles 1074 and 1075 are correspondingly applicable if the annual earnings are composed of the amounts specified at not less than weekly rates.

## ARTICLE 1077.

If the annual earnings as computed according to articles 1074 to 1076 do not equal 300 times the local wage rate (art. 1075), then 300 times the local wage rate shall be considered as the annual earnings.

## ARTICLE 1078.

The pension for injured young persons, which shall be computed according to the local wage rate, shall be fixed at first according to the age class in which they were when the accident occurred, and is to be correspondingly increased for them as they go into the higher wage class.

## ARTICLE 1079.

The constitution must contain provisions in regard to obtaining the annual earnings of undertakers and of pilots as well as other persons employed in the establishment, and strangers in the establishment who belong to the accident association (art. 1064, No. 1). In so far as the annual earnings exceed 1,800 marks (\$428.40), the excess shall here also be computed at only one-third.

## ARTICLE 1080.

In computing the pension of insured persons who belong to a branch institute (art. 1120) the annual earnings shall be taken as equal to 300 times the local wage rate which was established at the time of the accident for the seat of the establishment. In the case of young persons the pensions shall be increased as specified in article 1078.

## ARTICLE 1081.

If the accident occurs to a person already permanently partially disabled whose pension is based on the average monthly rate as above determined (art. 1068), then only that part shall be used as a basis which corresponds to the degree of earning power previous to the accident.

## ARTICLE 1082.

The local wage rate for persons already permanently partially disabled shall be considered as only that part thereof which corresponds to the degree of earning power previous to the accident.

## ARTICLE 1083.

If the injured person is insured against sickness on the basis of the imperial insurance or in a miners' sick fund, then articles 573 to 576

and 578 of the industrial accident insurance shall be correspondingly applied for relief during the first 13 weeks after the accident. In such cases contravention of article 93, paragraphs 2 and 3, and articles 95 to 97 of the Navigation Code are not to be considered as misdemeanors in the meaning of article 557, paragraph 1.

## ARTICLE 1084.

If the persons insured under articles 1046 and 1049 are not insured on the basis of the imperial insurance or in a miners' sick fund and also have no legal claim against the shipowner for sick relief during the first 13 weeks after the accident, then the undertaker must grant relief during this time. This does not apply in the case of insured persons whose annual earnings exceed 2,500 marks [\$955].

## ARTICLE 1085.

PARAGRAPH 1. The amount of relief to be provided by the undertaker shall be based on the following:

1. In the case of seamen according to articles 553 and 553a of the Commercial Code and articles 59 to 61 of the Navigation Code.
2. In other cases according to article 577, paragraph 1, and article 578 of the industrial accident insurance.

PAR. 2. Article 576 is correspondingly applicable as regards a claim for reimbursement of the undertaker against the accident association.

PAR. 3. The employer or carrier of the other relief under article 577, paragraphs 2 and 3, shall take the place of the undertaker.

## ARTICLE 1086.

PARAGRAPH 1. The accident association can assume either wholly or partly the benefits to be paid by the undertaker.

PAR. 2. In the case of seamen the undertaker must reimburse the expenses of the accident association. In such case reimbursement for the cost of medical treatment (art. 553 of the Commercial Code and art. 59 of the Navigation Code) shall be one-half of the amount which would have to be expended for institutional care at the seat of the competent section.

PAR. 3. In the case of persons other than seamen article 579, paragraph 1, sentences 2 and 3, shall be applicable to the reimbursement.

PAR. 4. This provision shall be correspondingly applicable if in the cases mentioned in article 1085, paragraph 3, in connection with article 577, paragraphs 2 and 3, the employer or carrier of the other relief takes the place of the undertaker.

## ARTICLE 1087.

PARAGRAPH 1. In the case of injured persons who belong to a branch institute relief for the first 13 weeks after the accident shall not be based according to articles 1083 to 1086.

PAR. 2. In the case of such injured persons the commune in whose district the establishment has its seat must grant sick benefits according to article 182. In the place of sick benefits it may grant hospital care and house money according to articles 184 and 186; with the consent of the injured person it may also grant care according to article 185, paragraph 1, and deduct up to one-fourth of the pecuniary sick benefits therefor. The local wage rate of the seat of the establishment shall be used as basic wage.

## ARTICLE 1088.

PARAGRAPH 1. The commune is not required to provide sick benefits according to article 1087 in the following cases:

1. In so far as the injured person has a claim for similar relief on the basis of the sickness insurance or other legal provisions.

2. If he is exempt from insurance on the basis of benefits which are of equal value with the sickness insurance.

3. As long as he remains in a foreign country.

PAR. 2. If those first obliged to do so do not provide the injured person with the sick benefits, then the commune shall assume such provision. The expenditures for this purpose must be repaid to the commune by those obliged to make such provision.

PAR. 3. In such cases the compensation for the sick care as well as in the case of treatment in a hospital shall be equal to three-eighths of the basic wage according to which the pecuniary sick benefits of the beneficiary are computed, and in the case of maintenance in a hospital one-half of the basic rate. If no other basic wage is specified, then the local wage rate of the seat of the establishment shall be used.

#### ARTICLE 1089.

PARAGRAPH 1. Upon demand of the commune the general local sick fund, or, in the absence of such, the rural sick fund of the place of residence or abode, shall take upon itself the providing of the sick benefit.

PAR. 2. Expenditures on this account shall be reimbursed by the commune. In such cases if a higher expenditure is not shown, article 1088, paragraph 3, shall be applicable.

#### ARTICLE 1090.

PARAGRAPH 1. The branch institute may take upon itself the provision of medical treatment (art. 1087).

PAR. 2. The commune, or under the reservation of articles 1513 and 1516 those otherwise obliged to do so (art. 1088, par. 1, Nos. 1 and 2), shall reimburse the branch institute in so far as the injured person had a claim upon them for benefits. In such cases article 1088, paragraph 3, is applicable.

#### ARTICLE 1091.

PARAGRAPH 1. The relief of the injured person may be transferred by the branch institute to the commune, which is obliged to provide sick benefits for the first 13 weeks, or to the sick fund (art. 1089) until the end of the course of treatment.

PAR. 2. The branch institute must reimburse the commune or the sick fund for the expenditure on this account. In such cases article 1088, paragraph 3, shall be applicable unless a higher expenditure is shown.

#### ARTICLE 1092.

PARAGRAPH 1. If, in the case of persons who are not insured against sickness on the basis of the imperial insurance or with a miners' sick fund, and also do not have a claim for sick relief according to article 1087, it is to be feared that an accident compensation will have to be provided for, the accident association may inaugurate a course of treatment even before the expiration of the first 13 weeks after the accident in order to remove the consequences of the accident or to alleviate the same.

PAR. 2. The association may place the insured person in a medical institution. In such cases article 597, paragraphs 2 to 4, is applicable.

PAR. 3. The association, with his consent, may grant the injured person care according to article 185, paragraph 1.

PAR. 4. The injured person may demand from the accident association a proper reimbursement for the earnings which he has lost on account of the course of treatment.

## ARTICLE 1093.

Even without granting the injured person a course of treatment, the accident association may investigate the consequences of the accident within the first 13 weeks. Article 581, paragraph 1, is here correspondingly applicable.

## ARTICLE 1094.

Articles 582 and 583, paragraph 1, and article 584 are applicable in regard to—

The granting of the accident pension before the expiration of the 13 weeks.

The transfer of the claim for pecuniary sick benefit before the expiration of the 13 weeks.

The liability of the accident association for the attitude of the carrier of the sickness insurance before the expiration of the 13 weeks.

In such cases article 583, paragraph 1, is also applicable for the payments of the commune (art. 1087).

## ARTICLE 1095.

In fatal cases, the following must in addition be granted:

1. A funeral benefit according to articles 1096 and 1097.
2. A pension to the survivors beginning with the date of death.

## ARTICLE 1096.

PARAGRAPH 1. The funeral benefit shall be granted in the following cases:

1. If the shipowner does not have to bear the cost of burial according to article 554 of the Commercial Code or article 64 of the Navigation Code (*Seemannsordnung*);
2. If the deceased was buried on land.

PAR. 2. Article 203 is here correspondingly applicable.

## ARTICLE 1097.

PARAGRAPH 1. The funeral benefit shall consist of the following amount:

1. When paid by the accident association,
  - a. For seamen, two-thirds of the monthly average rate (arts. 1067 to 1073);
  - b. For other persons, the fifteenth part of the annual earnings. This amount shall be computed in the same manner as in the case of bodily injury; however, in such cases, article 1082 does not apply;
2. When paid by the branch institute, 20 times the local wage rate according to article 1080.

PAR. 2. In all cases, however, the funeral benefit shall be at least 50 marks [\$11.90].

## ARTICLE 1098.

PARAGRAPH 1. The pension to the survivors shall consist of a fraction of the annual earnings (arts. 1067 to 1073, 1097, par. 1, No. 1b, and art. 1080).

PAR. 2. In other cases, articles 588 to 596 of the industrial accident insurance are applicable in this respect; in such cases remaining on board a German ship, shall be considered the same as an abode in Germany.

## ARTICLE 1099.

PARAGRAPH 1. If the insured person has gone to sea on a vessel, then his survivors also have a claim to the pension if the vessel has sunk or according to articles 682 and 683 of the Commercial Code is regarded as missing, and during one full year after its sinking or after the last news of the vessel, no trustworthy information concerning the existence of the person missing has been received.

PAR. 2. The local insurance office may demand a solemn assurance from the survivors that they have received no other information regarding the existence of the missing person than that declared.

ARTICLE 1100.

PARAGRAPH 1. In such cases, the pension shall begin on the day of the sinking of the vessel, or if it is missing, one-half a month after the date up to which the latest news of the vessel reaches (art. 53 of the Navigation Code).

PAR. 2. The claim to further receipt of the pension shall cease if it is proved that the person believed to be dead is still alive.

ARTICLE 1101.

PARAGRAPH 1. If on account of a previous accident, the annual earnings (art. 1097, par. 1, No. 1b, and art. 1080) are smaller than the wages received before the earlier accident, then the previous pension is to be added to the annual earnings; in such cases, however, that amount may not be exceeded which, as annual earnings, was used as the basis for the previous pension.

PAR. 2. This shall not apply if the pension was computed according to the monthly average as determined above (art. 1068).

ARTICLE 1102.

PARAGRAPH 1. The accident association may grant treatment in a medical institution in place of sick treatment and pension (art. 1065 in connection with art. 558). In such cases, article 597, paragraphs 2 to 5, and article 598 are applicable.

PAR. 2. With the consent of the injured person, the accident association may grant free medical treatment and maintenance on board a vessel instead of treatment in a medical institution.

ARTICLE 1103.

Article 599 is applicable in regard to home care.

ARTICLE 1104.

PARAGRAPH 1. If the accident association, according to article 1086, assumes the benefits of the undertaker, then in place of the relief designated in articles 1084 and 1085, it may grant care and maintenance in a hospital as well as grant house money according to articles 186 and 577, paragraph 1, in the cases mentioned in article 1085, paragraph 1, No. 2. In this connection, article 1102, paragraph 2, shall be correspondingly applicable.

PAR. 2. In the case of seamen, the undertaker must reimburse that amount for treatment and care which would have to be expended for treatment in a medical institution at the seat of the competent section.

PAR. 3. For persons other than seamen, the reimbursement men-

ARTICLE 1121.

The undertaker shall be considered as that person for whose account the establishment is conducted; in the case of navigation establishments this shall be the shipowner.

ARTICLE 1122.

PARAGRAPH 1. The following provisions of the industrial accident insurance shall be applicable:

Article 630, paragraph 3, concerning the maintenance of status of the accident association;

Article 634 concerning the compensation of accidents in establishments of other parties;

PAR. 2. The official bodies of the dissolved accident association shall wind up the affairs under supervision of the Imperial Insurance Office.

## SECTION FOUR.—ORGANIZATION.

## I. MEMBERSHIP AND RIGHT TO VOTE—REPRESENTATIVES.

## ARTICLE 1123.

Every undertaker of an establishment insured in it shall be a member of the accident association.

## ARTICLE 1124.

Membership begins with the opening of the establishment and with the beginning of the insurance obligation; for the Empire and the federal States the beginning of the membership shall be regulated according to article 1119.

## ARTICLE 1125.

On each vessel and in every other establishment the undertaker must make known through a placard the following:

To what section the vessel or the establishment belongs;

The location of the business office of the directorate of the accident association and of the directorate of the section.

## ARTICLE 1126.

If members or their local representatives do not possess their civic rights, they shall have no right to vote.

## ARTICLE 1127.

The constitution must specify the number of votes of shipowners according to the number of persons estimated according to article 1148.

## ARTICLE 1128.

PARAGRAPH 1. If the shipowner does not have his place of residence in the home port of the vessel, then he must appoint a representative of the vessel in the home port.

PAR. 2. The name of the representative and changes in the person of the same are to be communicated to the accident association. The shipowner's right to vote and right to be elected shall be suspended until this has been done. So long as this is the case, he shall not be invited to the general meetings of the associations, and in matters of the association's affairs the administrative bodies or the authorities thereof shall be considered as having delivered to him any document by posting it publicly for one week in their business rooms. If his name is not known, they may replace his name in the placard by the name of the vessel. The constitution may further restrict the shipowner in the execution of his rights of membership.

## ARTICLE 1129.

PARAGRAPH 1. The representative shall in legal and other matters represent the shipowner in his capacity as member of the association before the association. A limitation in the scope of the power of the representative as against the accident association shall be without effect.

PAR. 2. Communications to the representative concerning matters of the accident association shall have immediate effect for and against the shipowner.

## ARTICLE 1130.

PARAGRAPH 1. Joint owners of ships must designate a joint representative even if all of them have their place of residence in the home port. Article 1128 is here applicable.

PAR. 2. The manager of the shipowning firm appointed by the joint owners of the ship shall be considered as the representative before the accident association so long as no such representative has been appointed.

## ARTICLE 1131.

Articles 1128 to 1130 shall not apply to the branch institute.

## II. REGISTRATION OF ESTABLISHMENTS.

## ARTICLE 1132.

The authorities in charge of the shipping registry and ship's measurements must without delay send notice of the measurements and registry of new vessels to the directorate of the accident association, and the undertakers must send notice concerning the opening of other establishments to the local insurance office of the seat of the establishment.

## III. REGISTER OF ESTABLISHMENTS.

## ARTICLE 1133.

PARAGRAPH 1. The directorate of the accident association must keep a register of the establishments on the basis of the—

Register of ships in the German merchant marine as given in the latest edition of the handbook of the German merchant marine;

List of the undertakers which is sent to it by the Imperial Insurance Office under the provisions of article 22 of the law of July 13, 1887 (Reichs-Gesetzblatt, p. 329);

Notices concerning the opening of new establishments (art. 1132).

PAR. 2. No register of establishments shall be kept for the branch institute.

## ARTICLE 1134.

Articles 658, 659, 660, sentences 1 and 2, articles 661 and 663 of the industrial accident insurance are applicable as regards registry of establishments.

## IV. CHANGES IN THE CONDITIONS OF THE ESTABLISHMENT.

## ARTICLE 1135.

The authorities in charge of the ship's registry shall indicate to the directorate of the accident association all changes and cancellations in the ship's register.

## ARTICLE 1136.

For the vessels insured under article 1046, which are not entered in the ship's registry, the shipowners and managers of shipping firms and the representatives must report to the directorate of the accident association within the time specified by the constitution of the following matters:

Loss of the vessel (art. 1174);

Changes in the home port, name, class, and capacity of the ship;

Changes in the person and in the citizenship of the shipowners or joint owners.

## ARTICLE 1137.

PARAGRAPH 1. If these reports to the directorate are not made, or the reports to the authorities in charge of the register are not made (art. 14 of the flag law, Reichs-Gesetzblatt, 1899, p. 319) then the owner or joint owner whose name is registered in the register of the establishments is liable for the contributions which are to be assessed upon the members. This liability shall further include the fiscal year in which the report is made.

PAR. 2. The new owner is not released from liability on that account.

## ARTICLE 1138.

The undertakers of floating docks and of pilotage establishments and other establishments designated in article 1046, number 3, must report to the directorate of the accident association every change in the person for whose account the establishment is conducted and

all changes in the establishment which are of importance for its membership in the accident association. The report is to be made within the time limit which according to the constitution is specified for reports under article 1136. If the report is not made, then the undertaker shall suffer the same loss of rights as the shipowners in article 1137.

#### ARTICLE 1139.

If on the basis of the information from the reports received, or if on their own initiative the directorate of the accident association believes it necessary that the establishment shall be transferred to another accident association or because it is shut down shall be cancelled from the list, then articles 661 to 673 of the industrial accident insurance are correspondingly applicable both for the transfer and for cancellation as well as for transfer of the cost of the accidents and of a share of the reserve.

#### ARTICLE 1140.

PARAGRAPH 1. The obligation of giving notice in case of changes in the establishment which for the estimates are of importance (art. 1148) and the further procedure, shall be regulated by the constitution.

PAR. 2. The undertaker has the right of appeal against the decision which the accident association has issued on the basis of reports of changes or of its own initiative.

#### ARTICLE 1141.

If the accident association has a risk tariff, then the requirement to give notice shall apply in cases of changes in the establishment which affect the classification of establishments in the risk classes, while article 674 shall apply for the further procedure.

### V. CONSTITUTION.

#### ARTICLE 1142.

The accident association shall regulate its internal administration and order of business by a constitution, which the general meeting of the accident association shall decide upon.

#### ARTICLE 1143.

The constitution must specify—

1. The name and the seat of the accident association;
2. The composition, rights, and duties of the directorate;
3. The form of the declarations of the decisions of the directorate as well as its signature on behalf of the accident association, the manner of making decisions in the directorate, and its representation as to third parties;
4. The calling of the general meeting of the accident association and its method of arriving at a decision;
5. The right to vote of the members and the examination of their credentials;
6. The representation of the accident association as against the directorate;
7. The rates for loss of earnings and for traveling expenses which are to be granted to the representatives of the insured persons (art. 21);
8. Procedure of the administrative bodies of the accident association in classifying the vessels;
9. Procedure in cases of changes in the establishment and of a change in the person of the head of the establishment;
10. The consequences of shutting down an establishment or of a change in the person of the undertaker, especially as to the guaranteeing of his contributions if he shuts down the establishment;



11. The drawing up, examining, and acceptance of the annual balance sheet;
12. The administrative action relative to the issuance of the regulations containing provisions for accident prevention and for the supervision of the establishments;
13. Procedure in case of the reporting and release from membership of undertakers, of pilots, and of other persons insured according to article 1064, number 1, who belong to the accident association, as well as concerning the amount and ascertainment of the annual earnings of undertakers and of pilots;
14. The method of publishing notices;
15. The provisions as to the amendment of the constitution.

## ARTICLE 1144.

The following provisions of the industrial accident insurance shall apply for the:

Composition of the general meeting of the accident association of representatives, division of the accident association into sections and appointment of district agents (arts. 678 and 679);

Authority of the directorate of the accident association to impose penalties (art. 680);

Drawing up of the constitution (arts. 681 to 683).

## ARTICLE 1145.

The directorate of the accident association must make an announcement in the *Reichsanzeiger*, if the constitution, with the approval of the Imperial Insurance Office, has been changed in regard to—

1. The name or seat of the accident association;
2. The districts of the sections.

## VI. ADMINISTRATIVE BODIES OF THE ACCIDENT ASSOCIATION.

## ARTICLE 1146.

PARAGRAPH 1. The provisions of the industrial accident insurance (arts. 685 to 689) shall be applicable as regards the administrative bodies of the accident association.

PAR. 2. Managers of shipowning firms are also eligible to the administrative bodies of the accident associations.

## VII. EMPLOYEES OF THE ASSOCIATION.

## ARTICLE 1147.

The provisions of the industrial accident insurance (arts. 690 to 705) shall be applicable as regards employees of the accident association and as regards the transferring of business to salaried business managers.

## VIII. MAKING THE ESTIMATES—RISK TARIFF AND SPECIAL COSTS.

## ARTICLE 1148.

PARAGRAPH 1. For each seagoing vessel, there shall be estimated the average number of seamen who are necessary to form the crew.

PAR. 2. An estimate shall be made according to classes (arts. 1067 to 1071) on the basis of the following:

The handbook of the German merchant marine;

The registers of undertakers which according to the provisions of articles 21 and 22 of the law of July 13, 1887 (*Reichsgesetzblatt*, p. 329) have been drawn up on the creation of the accident association;

Changes in the conditions of the establishment.

## 1406 WORKMEN'S COMPENSATION AND INSURANCE.

PAR. 3. The above shall not apply in the case of the branch institute.

### ARTICLE 1149.

The constitution shall specify that risk classes shall be formed. In such cases articles 706 to 709 of the industrial accident insurance shall be applicable. The constitution must in such cases also contain provisions in regard to the procedure in the apportionment to the risk classes.

### ARTICLE 1150.

The directorate of the accident association shall make estimates concerning the vessels and shall apportion the establishments to the risk classes as specified in the constitution.

### ARTICLE 1151.

The members must upon demand within two weeks furnish such information to the administrative bodies of the accident association as is necessary to make estimates and apportionment. This shall also apply to the managers of shipowning firms, to the firms' representatives, and to the masters of the vessel.

### ARTICLE 1152.

In the periods within which the risk tariff is to be re-examined, the estimates and apportionment are to be regularly verified.

### ARTICLE 1153.

PARAGRAPH 1. Each member must be notified of his apportionment to the risk classes and each shipowner must be informed of the estimates of his navigation establishments.

PAR. 2. Even before the regular re-examination, the accidental association may make a new estimate of the ship's crew, and make a new apportionment of the establishment if it develops that the statements of the undertaker were incorrect or if a change has taken place in the establishment.

PAR. 3. The undertaker shall have an appeal against the estimate and apportionment.

### ARTICLE 1154.

PARAGRAPH 1. On the basis of accidents which have taken place on their vessels, the general meeting of the accident association, upon application of the directorate, may either impose supplementary assessments on the undertakers or grant them a rebate for the coming tariff period or for a part of the same.

PAR. 2. The undertaker shall have the right to appeal against the determination of supplementary assessments.

### ARTICLE 1155.

PARAGRAPH 1. The constitution may provide that higher contributions shall be paid for voyages with especially dangerous cargoes or in especially dangerous waters or seasons.

PAR. 2. The general meeting of the accident association shall specify the basis for such action and make regulations concerning the reporting and determination of the decisive facts.

PAR. 3. The general meeting may also transfer this matter to a committee or to the directorate.

PAR. 4. Such provisions shall require the approval of the Imperial Insurance Office. For the re-examination, articles 708 and 709 of the industrial accident insurance shall be correspondingly applicable.

### ARTICLE 1156.

PARAGRAPH 1. For the single voyages (art. 1155) the administrative bodies of the accident association may increase the contributions in proportion to such voyages as have been made in each fiscal year. The details on this point shall be specified in the constitution.

PAR. 2. Article 1151 shall apply as regards the obligation to supply information.

PAR. 3. The imposition of such contributions may be contested in the same way as in the case of a protest against the determination of the contributions (arts. 1178 to 1182).

#### IX. ADMINISTRATION OF THE ASSETS.

##### ARTICLE 1157.

The provisions of the industrial accident insurance shall be applicable as regards the administration of the assets (arts. 717 to 721).

#### SECTION FIVE.—SUPERVISION.

##### ARTICLE 1158.

The Imperial Insurance Office shall conduct the supervision of the accident association.

#### SECTION SIX.—PAYMENT OF THE COMPENSATION—RAISING OF THE FUNDS.

##### I. PAYMENTS THROUGH THE POST OFFICE DEPARTMENT.

##### ARTICLE 1159.

PARAGRAPH 1. The compensation shall be paid by the accident association upon the authorization of its directorate through German post offices and as a rule through those post offices in whose districts is the home port of the ship upon which the accident has occurred.

PAR. 2. The directorate shall notify the payee as to the office of payment.

PAR. 3. He may apply to the directorate or at the office of payment so designated to have the payments made at the post office of his place of residence.

##### ARTICLE 1160.

The following articles of the industrial accident insurance are to be applied in the following cases:

Article 727 in regard to the necessary certificates for payments;  
Article 728 as regards the collection of advance payments through the Post Office Department.

##### ARTICLE 1161.

The Imperial Insurance Office may specify the manner in which the payees are to be paid who customarily abide in a foreign country.

##### II. RAISING OF THE FUNDS.

##### ARTICLE 1162.

The means for the covering of its expenditures and for the costs of the administration of the branch institute (art. 1192) shall be raised by the accident association by means of members' contributions, which shall be sufficient for the needs of the preceding fiscal year.

##### ARTICLE 1163.

PARAGRAPH 1. At the branch institute the unions of communes and the undertakers belonging to the institute must pay fixed contributions, specified in advance (arts. 1195 to 1197).

PAR. 2. These contributions must cover the capitalized value of pensions which the institute will probably have to carry and in addition cover the other expenditures which the branch institute has made.

##### ARTICLE 1164.

PARAGRAPH 1. The provisions of the industrial accident insurance shall be applicable in the following cases:

## 1408 WORKMEN'S COMPENSATION AND INSURANCE.

In regard to the purposes for which the contributions may be raised and the means may be expended (arts. 736) ;

In regard to advances upon contributions as well as contributions paid in advance (arts. 738 and 739) ;

In regard to the accumulation of a reserve (arts. 741 to 747).

PAR. 2. These provisions, with the exception of article 736, shall not apply to the branch institute.

### III. PROCEDURE IN ASSESSMENTS AND COLLECTIONS.

#### ARTICLE 1165.

PARAGRAPH 1. The directorate of the accident association shall determine which part of the payments shown to have been made by the highest postal authorities shall be charged to the accident association and which part to the branch institute.

PAR. 2. Articles 1166 to 1184 shall be applicable as regards the assessment and collection of the contributions of members.

#### ARTICLE 1166.

PARAGRAPH 1. Within six weeks after the expiration of the fiscal year each member of the accident association shall transmit a wage list to the directorate of the accident association.

PAR. 2. This list must contain the following:

1. For each sea-going vessel the insured persons employed during the preceding fiscal year on the vessel, but not belonging to the crew (art. 1046, No. 2) ;
2. For establishments operating floating docks, pilotage establishments, and other establishments designated in article 1046, No. 3, the insured persons employed in the establishment during the preceding fiscal year;

in addition, for all these persons the wage list must show the following:

The compensation earned by these persons;

If the compensation actually received by these persons is not decisive, then a computation of the earnings which is to be used in the assessment and contributions.

PAR. 3. The constitution may permit a summary wage list in accordance with article 750, paragraph 3.

#### ARTICLE 1167.

The provisions of the industrial accident insurance (art. 751) shall be applicable in regard to the following:

Earlier transmittal of the wage list;

The keeping and preserving of the wage list.

#### ARTICLE 1168.

The accident association itself may draw up or complete the wage list in the case of members who do not transmit the same promptly or completely.

#### ARTICLE 1169.

The contributions of the members shall be assessed according to their apportionment to the risk classes, and in the second place according to the following:

1. In case of seagoing vessels according to the amounts obtained from [1] the sum of the average wage payments (arts. 1067 to 1070) for the estimated number of men in the crew and [2] from the wage list; supplementary charges, rebates, or increases of contributions (arts. 1154 and 1155) are to be considered in this connection.
2. In the case of other establishments according to the wage list.

#### ARTICLE 1170.

If during the period of contribution the annual amount of the wage

payments exceeds 1,800 marks [\$428.40], then of the excess only one-third shall be included in the computation. If it exceeds 5,000 marks [\$1,190], then the excess shall be included in the computation only so far as the constitution has extended the insurance to a higher amount of the annual earnings.

#### ARTICLE 1171.

PARAGRAPH 1. In the case of vessels which are proved to have been out of commission without interruption for a period longer than 14 days, the contribution is to be proportionately reduced for that period of inactivity which exceeds 14 days.

PAR. 2. It shall be reduced for that fiscal year in which the vessel was out of commission. If the period of inactivity extends over into the following fiscal year, then the reduction as far as necessary shall be postponed until then.

#### ARTICLE 1172.

PARAGRAPH 1. The contributions shall be reduced only if the shipowner, manager of the shipowning firm, or representative shall within six weeks after the expiration of the fiscal year prove to the directorate of the accident association an interrupted period of inactivity, in the form of a certificate which has been duly attested.

PAR. 2. If the vessel returns to the home port only after the expiration of the fiscal year, then proof can be brought even within six weeks following the return; the contribution, however, must for the time being be paid in full.

#### ARTICLE 1173.

PARAGRAPH 1. In the case of vessels which in the course of the fiscal year have been lost or are missing (arts. 862 and 863 of the Commercial Code), the directorate of the accident association on its own initiative shall reduce the contributions as soon as the facts which are decisive on the question have been made known to it.

PAR. 2. The reduction shall begin with the date of the loss, or one-half a month after the date up to which the latest news in regard to the vessel reaches.

PAR. 3. If in the case of the loss of the vessel German seamen are transported homeward free of charge upon a German seagoing vessel or are brought back on the vessel (art. 1054, No. 2), then the contribution shall not be reduced for this period.

PAR. 4. If the contribution had already been paid, then it shall be returned to the proper proportion.

#### ARTICLE 1174.

A vessel shall be considered as lost also in the cases when it has sunk, has been condemned as of insufficient value for repair, and on that account has been publicly sold without delay, also when it has been robbed, captured, or detained and declared a valid prize.

#### ARTICLE 1175.

The directorate of the accident association shall compute the contribution to be apportioned to each member for the covering of the total expenditure.

#### ARTICLE 1176.

The provisions of the industrial accident insurance (art. 754) are applicable as regards extracts from the assessment roll, its communication, and the request for payment; if a manager of the shipowning firm, or representative, has been appointed, then these are to receive notices.

#### ARTICLE 1177.

Articles 755 and 756 are correspondingly applicable as regards a new determination of the contribution after the extract has been transmitted. The new determination is also permissible when at

a later time, because of incorrect statements of the undertaker, the ship's crew has again been estimated (art. 1153) or facts become known on account of which certain voyages are to be specially assessed (art. 1155).

#### ARTICLE 1178.

PARAGRAPH 1. A protest against the determination of the contributions may be made by a representative or manager of the shipping establishment, and if such has not been appointed, by a member. Articles 757, 758, paragraph 1, and article 759 of the industrial accident association are correspondingly applicable.

PAR. 2. The apportionment and the making of the estimate (arts. 1150 and 1152) may not be contested in this manner.

#### ARTICLE 1179.

PARAGRAPH 1. Appeals against the decision of the directorate may only be based upon the following:

Mistakes in the computation:

Incorrect rating of the estimate of the crew necessary for the vessel;

Incorrect rating in any other class of the risk tariff than that to which the establishment belongs;

Insufficient consideration of the rebates (art. 1154);

Incorrect determination of the duration of employment and of the annual earnings of the insured persons who are employed in establishments other than those engaged in navigation;

Insufficient deductions on account of the inactivity of the vessel.

PAR. 2. An appeal on account of the two last-mentioned reasons is not permissible if the directorate has itself drawn up or computed the wage list or has not reduced the contributions because of the negligence of the persons required to do so.

#### ARTICLE 1180.

PARAGRAPH 1. If individual voyages have been specially assessed (art. 1155), then an appeal may be based on the claim that the actual prerequisites for a higher contribution do not exist.

PAR. 2. This shall not apply if the person required to do so has neglected to file the required reports.

#### ARTICLE 1181.

If, upon protest or appeal, the contribution has been reduced, then article 760 shall be applicable as regards the covering of the deficit and the balancing of the excess payment. The same article shall also apply if the loss of the vessel has only been determined at a later time.

#### ARTICLE 1182.

If it later develops that a contribution paid without protest was collected either wholly or partly without right, then articles 1178 to 1181 shall be correspondingly applicable.

#### ARTICLE 1183.

The shipowner is liable not only with the ship and the freight, but also personally for the contributions, for the advance upon contributions, and for amounts deposited as guaranties (art. 1143, No. 10). Joint owners are liable in proportion to their shares in the ship.

#### ARTICLE 1184.

PARAGRAPH 1. Article 762 is applicable in regard to the covering of contributions which can not be collected.

PAR. 2. The accident association may transfer to the manager of the shipping firm or representative thereof the compulsory collection of amounts which are a charge upon a shipping firm or upon a joint owner.

## IV. TRANSFERRING AMOUNTS TO THE POST OFFICE DEPARTMENT.

## ARTICLE 1185.

The provisions of the industrial accident insurance are applicable as regards the transferring of amounts to the post office (arts. 777 to 782).

## SECTION SEVEN.—BRANCH INSTITUTE FOR SMALL-SCALE ESTABLISHMENTS ENGAGED IN NAVIGATION AND IN DEEP-SEA FISHING AND COAST FISHING.

## ARTICLE 1186.

Those persons are insured in the branch institute who are engaged in establishments engaged in navigation and fishing as described in article 1120.

## ARTICLE 1187.

The following are also insured in the branch institute:

1. Undertakers subject to the insurance according to article 1058 who conduct navigation and fishing establishments as a business.
2. Those undertakers who are in charge of establishments engaged in navigation and fishing of the kind described in article 1120, who have insured themselves.

## ARTICLE 1188.

The branch institute may not undertake other kinds of insurance.

## ARTICLE 1189.

The administrative bodies of the accident association administer the branch institute unless the constitution of the latter provides otherwise (art. 1194).

## ARTICLE 1190.

PARAGRAPH 1. The income and expenditures of the branch institute are to be accounted for separately, and its assets are to be kept separately.

PAR. 2. As far as is necessary, the accident association must advance the means for conducting the business of the branch institute from the reserve of the association.

## ARTICLE 1191.

The assets which are specified as belonging to the branch institute may not be used for the purposes of the accident association.

## ARTICLE 1192.

The accident association shall bear the cost of administration of the branch institute.

## ARTICLE 1193.

Article 791 shall be applicable in regard to the participation of the branch institute in the advance payments to the post office.

## ARTICLE 1194.

The general meeting of the accident association must draw up a separate constitution for the branch institute. Article 792, paragraph 2, article 793, Nos. 1, 2, 4, and 6, articles 794 and 796 of the industrial accident insurance are correspondingly applicable as regards this constitution. Article 793, No. 1, is to be correspondingly applied to undertakers subject to the insurance.

## ARTICLE 1195.

PARAGRAPH 1. At least once in every five years the Imperial Insurance Office shall specify the contributions in advance.

PAR. 2. These contributions are to be paid by those unions of communes of the coast States which include coast districts, and shall be apportioned to the communes according to the number of insured

## 1412 WORKMEN'S COMPENSATION AND INSURANCE.

persons who are engaged in their districts. The highest administrative authority shall specify the details in this connection.

PAR. 3. The Federal Council may order that in the apportionment of the contribution, the duration of the employment and variations in the customary daily wages of the locality, are to be considered.

### ARTICLE 1196.

PARAGRAPH 1. The individual union of communes shall raise one-half of the contributions in the same manner as its other expenditures.

PAR. 2. The other one-half of the contributions shall be collected from the undertakers affected through the intervention of the union or of the communes. The union of communes shall specify the details in this connection.

PAR. 3. The union of communes or the communes are responsible for contributions which are not collectible, and with the approval of their supervisory authorities they may defray either wholly or partly the cost from their own funds.

PAR. 4. They may specify that the undertakers shall report to their directorate every change in the person for whose account the establishment is conducted. If the report is not made, then the employer shall be responsible according to article 1137.

### ARTICLE 1197.

The undertaker shall have the right to appeal to the superior insurance office against being called on for contributions.

### SECTION EIGHT.—ADDITIONAL INSTITUTIONS.

#### ARTICLE 1198.

The provisions of the industrial accident insurance shall apply to additional institutions of the accident association (arts. 843 to 847).

### SECTION NINE.—ACCIDENT PREVENTION—SUPERVISION.

#### I. REGULATIONS FOR THE PREVENTION OF ACCIDENTS.

#### ARTICLE 1199.

PARAGRAPH 1. The accident association is required to issue the requisite regulations concerning the following:

1. For the undertakers concerning the arrangements and rules for the prevention of accidents as well as concerning the equipment of vessels;
2. Concerning the rules of conduct which insured persons must observe for the prevention of accidents in establishments.

PAR. 2. The regulations for the prevention of accidents are also to be issued for individual districts and for specified classes of vessels or establishments.

#### ARTICLE 1200.

An appropriate period of time must be given to the undertakers to provide the prescribed arrangements for the prevention of accidents.

#### ARTICLE 1201.

Contraventions on the part of undertakers against the regulations may be punished by fines up to 1,000 marks [\$238], those of the injured person up to 6 marks [\$1.43]. The insured person is not to be punished if he has violated regulations in carrying out the orders of his superior.

#### ARTICLE 1202.

In addition to the shipowner, the accident association may also declare the ship's master to be responsible for the execution of the regulations issued as above. For each neglected act, fines up to 300 marks [\$71.40] can be imposed upon him.

#### ARTICLE 1203.

Articles 852 to 856 of the industrial accident insurance are applica-



ble as concerns the decisions regarding the regulations and the preparation, while article 857 shall apply as regards the attitude to the reports of the technical supervisory officer.

#### ARTICLE 1204.

The representatives of the insured persons shall be selected by lot from a number of associates competent for navigation in the superior insurance office, and the lot shall be drawn by the chairman of the directorate in one of its sessions.

#### ARTICLE 1205.

PARAGRAPH 1. The following articles of the industrial accident insurance shall be correspondingly applicable in the following cases:

Article 859 as regards the election of representatives of the insured persons;

Article 861 as regards the election of substitutes for the representatives of the insured persons;

Article 863 as regards the allowances for representatives of insured persons;

Articles 864 to 868 as regards the approval of the regulations and the procedure in preparation thereof.

PAR. 2. The provisions of articles 16, 19 to 22, and 24 as regards elected representatives of insured persons shall also be correspondingly applicable to these representatives of the insured persons and their substitutes.

#### ARTICLE 1206.

The directorate of the accident association shall communicate the approved regulations to the higher administrative authorities and all marine offices affected, and shall publicly placard the regulations in the business offices of the latter and in the seamen's homes.

#### ARTICLE 1207.

The directorate of the accident association shall be competent for determining the fines imposed on the undertakers.

#### ARTICLE 1208.

PARAGRAPH 1. That marine office (*Seemannsamt*) shall determine the fines imposed on the masters of vessels which has first recognized the neglect (art. 1202) and shall enter the same in the ship's log. These fines are to be collected immediately.

PAR. 2. Against the imposition of such fines, the master of the vessel, the ship's owner, manager of the shipping firm or representative shall have the right to appeal to the supervisory authority of the marine office (*Seemannsamt*) within one month after the end of the voyage.

PAR. 3. The same or another marine officer (*Seemannsamt*) may again impose a fine if in the meantime the order has not been obeyed, unless it can be shown that it was impossible of execution.

PAR. 4. The local insurance office shall be competent as regards the imposition of fines on the insured persons (art. 1199, par. 1, No. 2).

## II. SUPERVISION.

#### ARTICLE 1209.

Articles 874 and 875 of the industrial accident insurance are applicable as regards the execution of the regulations for the prevention of accidents.

#### ARTICLE 1210.

PARAGRAPH 1. In order to verify the reports transmitted according to law or constitution, the accident association can, through accounting officials, inspect the ship's log, muster rolls, certificates, bill of tonnage, and other ship's papers and lists from which may be

## 1414 WORKMEN'S COMPENSATION AND INSURANCE.

ascertained the number of insured persons as well as the extent and duration of the completed voyages.

PAR. 2. The local insurance office may also undertake such examination.

### ARTICLE 1211.

With the approval of the Imperial Insurance Office, the business of the technical supervisory official and the accounting official may be combined in one person.

### ARTICLE 1212.

In their business office, the authorities are under obligation to place open for inspection of the accounting officials of the accident association all transactions and documents which relate to conditions of the vessel and the crew thereof.

### ARTICLE 1213.

PARAGRAPH 1. The ship's owners, managers of the shipping concern, and representatives as well as masters of vessels must permit the technical supervisory officials to enter their vessels and inspect the same and must open for inspection on the spot the ship's papers and lists for the inspection of the accounting officials.

PAR. 2. In the same manner, the other undertakers must permit the inspection of their establishments and present their lists for inspection.

### ARTICLE 1214.

PARAGRAPH 1. The marine office (*Seemannsamt*) may investigate vessels for the purpose of ascertaining whether the regulations for the prevention of accidents have been complied with.

PAR. 2. The obligations arising out of articles 1212 and 1213 are also applicable to the marine office. The marine office must be permitted to enter fines imposed by it in the ship's log.

### ARTICLE 1215.

Upon the application of the technical supervisory officials or of the accounting officials, the marine office (*Seemannsamt*) can impose upon persons, obliged to do so according to articles 1210, 1213, and 1214, fines up to 300 marks [\$71.40] to force them to perform their duties.

### ARTICLE 1216.

PARAGRAPH 1. The provisions of the industrial accident insurance are applicable as regards the following:

Taking of the oath (art. 882);

Communicating the name and residence of the technical supervisory officials as well as the activities of the latter (art. 883).

PAR. 2. However, the higher administrative authorities or the authorities or officials designated by them shall take the place of the State supervisory official in regard to the communication.

### ARTICLE 1217.

PARAGRAPH 1. The provisions of the industrial accident insurance are applicable in regard to—

Damages to the undertakers in the case of neglecting to comply with the obligation as regards supervision (art. 887);

Supervision through the local insurance office and the Imperial Insurance Office (arts. 888 and 889).

PAR. 2. The accident association is also authorized in case of inspection of unclassified vessels to collect from the owners of the latter those costs which have arisen through the determination of the condition of the hull of the vessel and the machinery equipment and which were an increase as compared with the cost of inspecting classified vessels. Costs of this kind shall likewise be collected in the same manner as communal taxes.

## SECTION TEN.—ESTABLISHMENTS OF THE EMPIRE AND OF THE STATES.

## ARTICLE 1218.

PARAGRAPH 1. Articles 892, 893, 895, and 887 are correspondingly applicable whenever the Empire or a federal State shall take the place of the accident association.

PAR. 2. In such a case, the following provisions of the navigation accident insurance shall not apply:

The provisions concerning dissolution of the accident association (art. 1122 in connection with art. 647, pars. 1 and 3);

The provisions in regard to the constitution contained in articles 1123 to 1156 and article 1157 in connection with articles 717 to 720;

The provisions concerning supervision (art. 1158);

The provisions in regard to raising of funds as well as the procedure in the assessment and collection (arts. 1162 to 1184);

The provisions concerning transferring of amounts to the post office contained in article 1185 in connection with articles 781 and 782;

The provisions in regard to the branch institute (arts. 1186 to 1197);

The provisions relating to additional institutions (art. 1198);

The provisions relating to the prevention of accidents and supervision contained in articles 1199 to 1216 and article 1217, paragraph 1, in connection with articles 887 and 889 as well as article 1217, paragraph 2;

The penal provisions contained in articles 1220 to 1223 and 1224 in connection with article 910.

## SECTION ELEVEN.—LIABILITY OF UNDERTAKERS AND THEIR REPRESENTATIVES.

## ARTICLE 1219.

PARAGRAPH 1. The provisions of the industrial accident insurance (arts. 898 to 907) are applicable as regards the liability of undertakers and their employees.

PAR. 2. In such cases joint owners, pilots and persons of the ship's crew shall have the same status (art. 899).

PAR. 3. This provision shall apply in the case of collision of several vessels which are subject to the navigation accident insurance, to the shipowners of all vessels affected thereby, and to all persons having an equal status with the shipowners.

PAR. 4. Claims for compensation for damages sustained through accident, which a person insured in the branch institute has in the case of bodily injury according to law for the first 13 weeks, shall be retained, provided that the injured person does not have a claim to the benefits of the sickness insurance against a sick fund, miners' sick fund or substitute fund, or if the injured person is exempt from the insurance on account of being entitled to benefits of equal value.

PAR. 5. However, the obligation to provide relief which rests upon the shipowner on the basis of articles 553 to 553b of the Commercial Code and articles 59 to 62 of the Navigation Code are not affected hereby.

## SECTION TWELVE.—PENAL PROVISIONS.

## ARTICLE 1220.

The accident association may impose fines up to 500 marks [\$119] upon undertakers, joint owners, managers of shipping firms, representatives and masters of vessels if in the three cases mentioned herewith the reports actually contained statements whose incorrect-

ness these persons either knew or under the circumstances must have known; these cases are the following:

1. Reports of the kind not designated in article 1581 which they have transmitted in compliance with the law or constitution;
2. An information which is demanded of them according to the law or constitution;
3. Explanations which must be transmitted to the competent official bodies of the accident association for the purpose of assignment to risk classes.

#### ARTICLE 1221.

The directorate of the accident association may in addition impose a fine up to 300 marks [\$71.40] upon persons designated in article 1220 if they do not promptly comply with their duties as specified in the law or in the constitution as regards the—

1. Appointment of representatives or communication of their names or change of them to the directorate of the accident association;
2. Reporting of changes in the establishment;
3. Transmission of reports;
4. Furnishing of information;
5. Complying with the provisions of the constitution in regard to the shutting down of establishments.

#### ARTICLE 1222.

In so far as on the basis of this law undertakers or joint owners are liable to penalties the following persons shall be considered as having the same status:

1. All members of the directorate wherever a stock company, mutual insurance association, registered co-operative society, guild, or other legal person is the undertaker or joint owner;
2. The business managers, if an association with limited liability is the undertaker or joint owner;
3. All copartners personally liable provided that they are not excluded from representation if another form of business corporation is the undertaker or joint owner;
4. The legal representative of undertakers not legally competent to transact business, or partially so, as well as liquidators of a business corporation, a mutual insurance association, a registered co-operative society, a guild, or any other legal person.

#### ARTICLE 1223.

The employer is liable for the fines which according to article 1183 have been imposed upon him or the ship's master upon the basis of articles 1220 to 1222.

#### ARTICLE 1224.

The following provisions of the industrial accident insurance shall be correspondingly applicable:

Article 910 in regard to appeals against the determination of fines;

Article 911 in regard to deducting the contributions from the earnings and in such cases shall also be applicable to joint owners, masters of vessels and their employees;

Article 914 in regard to the funds to which the fines shall accrue, however, in place of the sick fund of the place of employment, that sick fund shall receive the sum in whose district the establishment has its seat.

## ARTICLE 1225.

The provisions against limiting the insured persons in their rights contained in this law (art. 139) shall also apply to joint owners, master of vessels and their employees and likewise the penal provisions as regards contravention (art. 140).

## BOOK FOUR—INVALIDITY AND SURVIVORS' INSURANCE.

## SECTION ONE.—SCOPE OF THE INSURANCE.

## I. COMPULSORY INSURANCE.

## ARTICLE 1226.

PARAGRAPH 1. Beginning with the completed sixteenth year of age, the following persons are insured in case of invalidity and old age and in addition in favor of their survivors as specified herewith:

1. Workmen, helpers, journeymen, apprentices, and servants.
2. Establishment officials, foremen, and other employees in similar higher positions if such employment is for all of them their principal occupation.
3. Clerks and apprentices in commercial establishments, clerks and apprentices in pharmacies.
4. Members of the stage and of orchestras without regard to artistic value of their services.
5. Teachers and tutors.
6. The crews of German seagoing vessels and the crews of vessels engaged in inland navigation.

PAR. 2. The prerequisite of insurance for all of these persons is that they shall be employed for compensation (art. 160), and for those designated under Nos. 2 to 5, as well as for masters of vessels that their regular annual earnings in the form of compensation shall not exceed 2,000 marks [\$476].

## ARTICLE 1227.

An employment in which the compensation consists only of free board and lodging is exempt from insurance.

## ARTICLE 1228.

Those Germans are also insured who are employed in an official representative office of the Empire or of a federal State in a foreign country or employed by the directors or members thereof.

## ARTICLE 1229.

The Federal Council may either generally or for single districts extend the insurance obligation for specified branches of the industry to the following:

1. Persons carrying on business or other undertakers of establishments who regularly employ in their establishments either no one or at the most one person subject to the insurance.
2. Persons engaged in home-working industries (art. 162) without regard to the number of their home-working employees.

## ARTICLE 1230.

The Federal Council may specify in how far persons conducting a business (or persons giving the order, art. 469) are required to fulfill the obligations of an employer for the following:

1. Persons engaged in home work upon their order and for their account, as well as home-working employees of such persons;
2. Persons employed in home work upon their order by intermediate persons, distributors, factors, and zwischenmeisters.

## ARTICLE 1231.

The Federal Council may specify how far Germans in the service of foreign States and such persons who are not subject to German jurisdiction are required to fulfill the obligation of employers.

## ARTICLE 1232.

The Federal Council shall specify in how far temporary services shall remain exempt from the insurance.

## ARTICLE 1233.

PARAGRAPH 1. The Federal Council may specify that foreigners shall be exempt from insurance whose sojourn in Germany has been permitted by the authorities for only a specified time.

PAR. 2. In such cases, the employer shall pay according to the orders of the Imperial Insurance Office such an amount to the insurance institute as they would otherwise have to pay from their own means.

## ARTICLE 1234.

PARAGRAPH 1. Exempt from the insurance are employees in the establishments or in the service of the Empire, of a federal State, of a union of communes, and of a commune or of an insurance carrier, if there has been guaranteed to them a claim to retirement pension equal to the minimum amount of the invalidity pension according to the rates of the first wage class as well as to widows' pension according to rates of the same wage class and likewise to orphans' pensions.

PAR. 2. The same shall apply to teachers and tutors in the public schools or institutions.

## ARTICLE 1235.

The following are exempt from the insurance:

1. Officials of the Empire, of the federal States, of the unions of communes, of the communes, of the insurance carriers, and teachers and tutors in the public schools or institutions, as long as they are being trained solely for their occupation;
2. Military persons who carry on during their service or during their training for a civil employment, one of the occupations designated in article 1226, to which article 1234 is to be applied;
3. Persons who are employed in teaching for a compensation, during the scientific training for their future occupation.

## ARTICLE 1236.

Whoever is receiving an invalidity or survivors' pension according to imperial law or is an invalid shall be exempt from insurance (arts. 1255 to 1258).

## ARTICLE 1237.

Upon application the following persons shall be exempt from the insurance obligation, if they have been guaranteed retirement pensions, part pay, or similar receipts equal in amount to the minimum invalidity pensions according to the rates of the first wage class and in such connection have been guaranteed a claim to survivors' relief (art. 1234). These persons are—

Whoever has been guaranteed these benefits by the Empire, a federal State, a union of communes, a commune, or an insurance carrier;

Whoever has been guaranteed these benefits on the basis of earlier employment as teacher or tutor in a public school or institution.

## ARTICLE 1238.

Upon their application, there shall be exempt from the insurance

obligation, those persons subject to the insurance who have been employed during or after the time of their college training as preparation for their future occupation, or have been employed in a position which forms a transitory step to an employment both exempt from insurance and corresponding to an employment requiring a college training.

## ARTICLE 1239.

PARAGRAPH 1. Upon his application there shall be exempt from insurance obligation whoever in the course of a calendar year undertakes work for wages only in specified seasons of the year for not more than 12 weeks or all together for not more than 50 days, but in other respects procures independently his maintenance or is employed without compensation. The exemption is permissible only as long as, according to article 1279, 100 computable weekly contributions have not been paid.

PAR. 2. The Federal Council may determine particulars hereto.

## ARTICLE 1240.

PARAGRAPH 1. The local insurance office (decision committee) competent for the place of residence of the person making the application shall decide thereon. If the applicant has no residence in Germany, then the local insurance office of the place of his permanent abode shall decide. On appeal, the superior insurance office shall decide finally.

PAR. 2. Exemption shall be effective from the date of receipt of the application.

## ARTICLE 1241.

PARAGRAPH 1. The local insurance office (decision committee) shall revoke the exemption as soon as the prerequisites required thereby are no longer present; upon appeal the superior insurance office shall decide finally.

PAR. 2. The insurance obligation shall again enter into force upon the relinquishment of the exemption and upon its final revocation.

## ARTICLE 1242.

Upon the application of the employer, the Federal Council shall specify in how far articles 1234 and 1235, No. 1, articles 1237, 1240 and 1241 shall be applicable to the following:

1. Persons employed in establishments or in the service of other public unions or corporations or as teacher and tutor in nonpublic schools and institutions, if the claims designated in article 1234 have been guaranteed to them or if they are only being trained for their occupation;
2. Persons to whom on the basis of earlier employment in such unions or corporations, schools or institutions, have been guaranteed retirement pensions, part pay, or similar benefits equal to the minimum amount of the invalidity pension according to the rates of the first wage class, and in addition thereto have been guaranteed a claim to survivors' relief (art. 1234);
3. Officials and employees of the court, domanial, cameralistic, forestry, and similar administrations of the State sovereigns, as well as of the ducal regency of Brunswick and the administration of the entailed estates of the princes of Hohenzollern.

## II. VOLUNTARY INSURANCE.

## ARTICLE 1243.

PARAGRAPH 1. Up to their completed fortieth year of age the following persons are entitled to join the insurance voluntarily (self-insurance):

## 1420 WORKMEN'S COMPENSATION AND INSURANCE.

1. The persons designated in article 1226 under Nos. 2 to 5 and masters of vessels, if their regular annual earnings are more than 2,000 marks [\$476] but do not exceed 3,000 marks [\$714];
2. Persons carrying on a business and other undertakers of establishments who employ regularly in their establishments either no one or at the most two persons subject to the insurance, as also persons engaged in home work;
3. Persons who are exempt from the insurance according to articles 1227 and 1232.

PAR. 2. When they cease to comply with the conditions which are the basis for self-insurance, those entitled to self-insurance may continue the same or renew it at a later time according to article 1283.

### ARTICLE 1244.

Whoever ceases to have the status of a person subject to the insurance may voluntarily continue the insurance or renew it at a later time according to article 1283 (continuation of insurance).

## III. WAGE CLASSES.

### ARTICLE 1245.

The following classes are created for insured persons on the basis of the amount of the annual earnings:

- Class I, up to 350 marks [\$83.30];
- Class II, over 350 marks [\$83.30] and up to 550 marks [\$130.90];
- Class III, over 550 marks [\$130.90] and up to 850 marks [\$202.30];
- Class IV, over 850 marks [\$202.30] and up to 1,150 marks [\$273.70];
- Class V, over 1,150 marks [\$273.70].

### ARTICLE 1246.

PARAGRAPH 1. Unless the following provisions specify otherwise, an average amount instead of the actual annual earnings shall be decisive as regards the apportionment to the wage classes.

PAR. 2. The annual earnings shall be considered as the following:

1. For members of a sick fund or of a miner's sick fund, 300 times the basic wage (arts. 180, 181).
2. For seamen insured on the basis of article 1046, number 1, in so far as the imperial chancellor has determined for them an average amount (arts. 1067 to 1071), the amount so determined.
3. Otherwise 300 times the amount of the local wage rate in so far as the superior insurance office has not specified it otherwise for single branches of industry.

PAR. 3. Agricultural establishment officials belong to the third class and teachers and tutors to the fourth class in so far as the former do not show annual earnings in excess of 850 marks [\$202.30] and the latter in excess of 1,150 marks [\$273.70].

### ARTICLE 1247.

If a fixed cash compensation has been agreed upon in advance for periods of weeks, months, quarters, or years and this exceeds the average amount, then the cash compensation is to be used.

### ARTICLE 1248.

Insurance in a higher wage class is permitted, but the employer is only then required to pay the higher contribution if he has made an agreement with the insured person to this effect.

### ARTICLE 1249.

The insurance institute shall publish the wage classes and the con-



tributions for the individual localities of its district and for each group of insured persons.

SECTION TWO.—BENEFITS OF THE INSURANCE.

I. GENERAL PROVISIONS.

ARTICLE 1250.

The benefits of the insurance consist of invalidity pensions or old-age pensions, as well as pensions, widows' money, and orphans' settlements for the survivors.

ARTICLE 1251.

Invalidity or old-age pensions shall be received by whoever proves the existence of invalidity or of the age specified in the law as well as proof of the waiting term and has kept his claim in force.

ARTICLE 1252.

Relief for survivors shall be granted if the deceased at the time of his death has fulfilled the waiting term for invalidity pensions and had kept the claim alive; widow's money and orphans' settlements shall be granted only if the widow in addition at the time when these benefits became due has herself fulfilled the waiting term for invalidity pensions and has kept the claim alive.

ARTICLE 1253.

Computed from the receipt of the application thereof, no arrears of pension shall be paid for more than one year of the period preceding the application, unless the person entitled has been hindered through conditions which were beyond his control from making the application at the proper time. In such case, the application shall be made within three months after the preventing cause has been removed.

ARTICLE 1254.

PARAGRAPH 1. Whoever purposely makes himself an invalid shall lose the claim to a pension.

PAR. 2. If the insured person or the widow has incurred the invalidity while committing an act which according to the verdict of a court is a crime, or intentional misdemeanor, then the pension may be denied either wholly or in part. Contraventions of mining regulations or of article 93, paragraphs 2 and 3, and articles 95 to 97, of the Navigation Code, shall not be considered as misdemeanors in the meaning of the preceding sentence. Invalidity pensions or widows' pensions may be either wholly or partly transferred to relatives living in Germany if the insured person or the widow have previously either wholly or partly supported them from their earnings. In the meaning of this paragraph, German protectorates shall be considered as parts of the Empire.

PAR. 3. The pension may also be denied if no verdict of a court has been rendered because of the death, absence, or any other cause connected with the person of the applicant.

II. INVALIDITY PENSIONS.

ARTICLE 1255.

PARAGRAPH 1. Without regard to age, an insured person shall receive an invalidity pension if, as the result of sickness or other infirmity, he has become a permanent invalid.

PAR. 2. That person shall be considered an invalid who is no longer in a condition to earn, through work which corresponds to his powers and abilities, and which with a proper consideration of his education and his previous occupation he may be expected to perform, one-third of that amount which persons physically and mentally sound of

the same kind and with similar education are accustomed to earn through labor in the same region.

PAR. 3. Invalidity pensions shall also be received by insured persons who are not permanent invalids, but who have been such during 26 weeks without interruption or have been invalids after the cessation of the pecuniary sick benefit; the compensation shall be paid for the further duration of the invalidity (sickness pensions).

#### ARTICLE 1256.

The invalidity pension shall commence on the day on which the invalidity begins, but without affecting articles 1253 and 1255, paragraph 3. If the beginning of the invalidity can not be determined, this date shall be considered as the one on which the application for a pension was received by the local insurance office.

### III. OLD-AGE PENSIONS.

#### ARTICLE 1257.

Old-age pensions shall be received by the insured person beginning with the completed seventieth year of life even if he is not an invalid.

### IV. BENEFITS OF SURVIVORS.

#### ARTICLE 1258.

PARAGRAPH 1. The widow's pension shall be received by a permanently invalidated widow after the death of her insured husband.

PAR. 2. That widow shall be considered an invalid who is no longer in a condition to earn, through work which corresponds to her powers and abilities, and which with a proper consideration of her education and her previous social status she may be expected to perform, one-third of that amount which physically and mentally sound women of the same kind and with similar education are accustomed to earn through labor in the same region.

PAR. 3. Invalidity pensions shall also be received by widows who are not permanent invalids, but who have been such during 26 weeks without interruption, or have been invalids after the cessation of the pecuniary sick benefit; the compensation shall be paid for the further duration of the invalidity (widows' sickness pensions).

#### ARTICLE 1259.

Orphans' pensions shall be received after the death of the insured father by his legitimate children under 15 years of age, and after the death of a female insured person by her fatherless children under 15 years of age. Illegitimate children shall also be considered as fatherless.

#### ARTICLE 1260.

PARAGRAPH 1. After the death of the insured wife of a disabled husband, who during her life has supported her family either wholly or principally out of her earnings, the legitimate children under 15 years of age shall receive orphans' pensions and the husband a widower's pension as long as the indigence lasts.

PAR. 2. In regard to orphans' pensions, this provision shall be applicable even if at the time of the death of the insured person the marriage had been dissolved.

#### ARTICLE 1261.

PARAGRAPH 1. After the death of the insured wife, whose husband without legal grounds has remained away from the common household and has not complied with his duties of support as a father, the legitimate children under 15 years of age shall receive orphans' pensions as long as they are indigent.

PAR. 2. This provision shall also apply if at the time of the death of the insured, the marriage had been dissolved and the husband has failed to fulfill his duty of support as a father.

## ARTICLE 1262.

If the insured person leaves orphan grandchildren under 15 years of age whose support, either wholly or partially, he had defrayed, then they shall receive orphan's pensions as long as they are indigent.

## ARTICLE 1263.

The pensions of the survivors begin with the date of the death of the one furnishing the support. If the widow on this date was not yet an invalid, then the beginning of the pension shall be determined by article 1256 or article 1258, paragraph 3.

## ARTICLE 1264.

The widow's money shall become due at the death of the husband and orphan's settlements at the completion of the fifteenth year of the lives of the children.

## ARTICLE 1265.

PARAGRAPH 1. The legal benefits shall also be granted in cases when the insured person is missing. He shall be considered as missing if during one year no trustworthy news has been received concerning him and the circumstances make his death seem probable.

PAR. 2. The local insurance office may demand from the survivors a solemn declaration that they have received no news concerning the existence of the missing person other than that which they have reported.

## ARTICLE 1266.

The date of the death of a missing person shall be fixed by the insurance institute according to its own discretion. Article 1100, paragraph 1, shall be applicable as regards persons who have disappeared while at sea.

## ARTICLE 1267.

Survivors shall have no claim to the benefits if they have intentionally brought about the death of the insured person.

## ARTICLE 1268.

PARAGRAPH 1. The claim of the survivors of a foreigner, if they at the time of his death did not customarily live in Germany, shall be limited to one-half of the benefits without the imperial subsidy.

PAR. 2. The Federal Council may suspend this limitation for foreign border territories or for subjects of such foreign States whose legislation guarantees corresponding relief.

PAR. 3. In the meaning of paragraph 1, German protectorates shall be considered as parts of the Empire.

## V. MEDICAL TREATMENT.

## ARTICLE 1269.

In order to prevent impending invalidity of an insured person or of a widow resulting from sickness, the insurance institute may inaugurate a course of medical treatment.

## ARTICLE 1270.

PARAGRAPH 1. The insurance institute may in particular place the insured person in a hospital or in an institution for convalescents.

PAR. 2. If the sick person is married and lives together with his family or has a household of his own, or is a member of the household of his family, then his consent thereto shall be required.

PAR. 3. In the case of a minor person, his consent shall be sufficient.

## ARTICLE 1271.

The relatives of the sick person whose support he has either wholly or principally defrayed out of his earnings shall, during the course of treatment (art. 1270) receive house money even in cases where he has no claim against the sick fund, the miners'

sick fund, or the substitute fund. It shall amount to one-fourth of the local wage for an adult laborer. If, however, up to the assumption of the matter by the insurance institute, the sick person was subject to the sickness insurance, the house money shall be based on the provisions of the sickness insurance for that time also for which the obligation of the sick fund no longer exists. An invalidity pension or widow's pension may be either wholly or partly refused for the duration of the course of treatment. The house money shall not be paid, for the time and to the extent that wages or salary are paid, on the basis of a legal claim.

## ARTICLE 1272.

If the sick person without legal or other reasonable ground declines to receive the medical treatment (art. 1269) and if the invalidity could probably have been prevented through the medical treatment, then the pension may, for the time being, be refused either wholly or partly if the sick person has been notified of this consequence.

## ARTICLE 1273.

In regard to controversies which have not been settled on the determination of the pension, the superior insurance office shall decide finally upon the appeal.

## ARTICLE 1274.

With the approval of the supervisory authority, the insurance institute may expend its funds to promote or to carry out general measures for the prevention of premature invalidity among insured persons or improve the health conditions of the population subject to the insurance. Approval may also be granted for the expenditure of lump sums.

## VI. PAYMENTS IN KIND INSTEAD OF PENSIONS.

## ARTICLE 1275.

PARAGRAPH 1. With the approval of the higher administrative authority, the communes or unions of communes may by legal enactment specify that pensions up to two-thirds of their amount shall not be paid in cash but in kind. This shall apply only to pensioners who reside in the district: *Provided*, That these or those supporting them receive no wages as agricultural workers, but according to local custom are paid either wholly or partly in kind, and provided a mutual agreement is reached concerning the payment in kind instead of a pension.

PAR. 2. In the case of orphans' pensions, the consent of the guardian shall be required in addition. The latter must secure the approval of the orphans' court.

PAR. 3. The value of the commodities shall be determined by the higher administrative authority according to the average prices.

## ARTICLE 1276.

PARAGRAPH 1. Payments in kind shall be granted by the commune of the place of residence. The claim to the pension shall be transferred to the commune to the extent of the value of the payments in kind.

PAR. 2. The local insurance office (decision committee) shall decide controversies between the commune and the beneficiary. The superior insurance office shall decide finally upon appeal.

PAR. 3. If the claim to the pension has been transferred to the commune finally, then the insurance institute shall notify the Post Office Department.

## ARTICLE 1277.

PARAGRAPH 1. The constitution of the insurance institute may au-

thorize the directorate to place the pensioner, upon his application, in a home for invalids or orphans' home or in a similar institution and use the pension either wholly or partly for this purpose.

PAR. 2. Invalid homes and similar institutions shall be considered as hospitals, asylums, and medical institutions in the meaning of article 11, paragraph 2, and article 23, paragraph 2, of the law relating to the place of residence as regards the claim for support (Reichs-Gesetzblatt, 1908, p. 381).

PAR. 3. Placing the pensioner in such an institution operates as relinquishment of the pension for one-quarter of a year, and if he does not object to the same within one month before the expiration of this time, each time for an additional quarter of a year.

#### VII. WAITING TERM.

##### ARTICLE 1278.

The duration of waiting term shall be—

1. In the case of invalidity pensions, if on the basis of the insurance obligation at least 100 contributions have been paid for the insured, 200 and in other cases 500 contributory weeks.
2. In the case of old-age pensions, 1,200 contributory weeks.

##### ARTICLE 1279.

PARAGRAPH 1. The contributions for voluntary insurance shall be included in the waiting term for invalidity pensions only if at least 100 contributions on the basis of the insurance obligation or of self-insurance have been paid.

PAR. 2. This shall not apply to the contributions which the insured person has voluntarily paid in the first four years after his branch of industry has become subject to the insurance.

#### VIII. EXPIRATION OF THE CLAIM.

##### ARTICLE 1280.

The claim shall cease if, during two years after the date of issue designated on the receipt card (art. 1416), less than 20 weekly contributions have been paid on the basis of the insurance obligation or of the continuation of the insurance.

##### ARTICLE 1281.

In the meaning of article 1280, the following periods are to be counted as weekly contributions:

1. Periods of military service, and of sickness (arts. 1393 and 1394).
2. The periods of employment not subject to the insurance during which the claimant or the deceased has received an invalidity or old-age pension from a sick fund or special institute of the kind designated in articles 1321, 1360, and 1375, or has received an accident pension equal to at least one-fifth of the full pension.

##### ARTICLE 1282.

In the case of self-insurance and its continuation, there must have been paid for the maintenance of the claim at least 40 contributions during the period designated in article 1280. This shall not apply if on the basis of the insurance obligation more than 60 contributions have been paid.

##### ARTICLE 1283.

PARAGRAPH 1. The claim shall again become effective if the insured person again takes up an employment subject to the insurance or if he renews the insurance status through voluntary payment of contributions and accordingly has completed a waiting term of 200 contributory weeks.

PAR. 2. If the insured person by again taking up the employment subject to the insurance, or by renewing the insurance status through voluntary payment of contributions, has completed the sixtieth year of life, then the claim shall only become effective if before the time when the claim expires he has made use of at least 1,000 contributory stamps.

PAR. 3. If the insured person has completed the fortieth year of life, then the claim shall become effective through voluntary payment of contributions, only if before the expiration of the claim he has used 500 contributory stamps, and accordingly has completed a waiting term of 500 contributory weeks.

#### IX. COMPUTATION OF INSURANCE BENEFITS.

##### ARTICLE 1284.

PARAGRAPH 1. The insurance benefits consist of a fixed imperial subsidy and of a share from the insurance institute.

PAR. 2. If the full pension amounts are not paid, then the shares of the Empire and of the insurance carrier shall be correspondingly reduced.

##### ARTICLE 1285.

The imperial subsidy shall consist of 50 marks [\$11.90] annually for each invalidity pension, old-age pension, widow's pension, widower's pension, and 25 marks [\$5.95] for each orphan's pension, single payments of 50 marks [\$11.90] for each widow's money, and 16 2-3 marks [\$3.97] for each orphan's settlement.

##### ARTICLE 1286.

The share of the insurance institute shall be based on the contributions and on the periods of military service and sickness which are considered as contributory weeks.

##### ARTICLE 1287.

In the case of invalidity pensions the insurance institute pays a basic amount and the supplementary increases; in the case of survivors' pensions, of widows' money and of orphans' settlements, it pays a part of the basic amount and of the supplementary increases, and in the case of old-age pensions a fixed annual amount.

##### ARTICLE 1288.

PARAGRAPH 1. The basic amount of the invalidity pension shall always be computed upon 500 contributory weeks. If less than this number are proved, then the number lacking shall be added from wage class I; if there are more than this number, then the contributions in excess which have been paid in the lower wage classes shall not be considered.

PAR. 2. For each contributory week there shall be credited the following:

	Pfennigs.	
In wage class I -----	12	[\$0.029]
In wage class II -----	14	[.033]
In wage class III -----	16	[.038]
In wage class IV -----	18	[.043]
In wage class V -----	20	[.048]

##### ARTICLE 1289.

The supplementary increase of the invalidity pension shall for each contributory week amount to the following:

	Pfennigs.	
In wage class I -----	3	[\$0.007]
In wage class II -----	6	[.014]
In wage class III -----	8	[.019]
In wage class IV -----	10	[.024]
In wage class V -----	12	[.029]

## ARTICLE 1290.

For each contributory week, one contribution only shall be considered. If a larger number of contributory weeks has been fixed and the stamps in excess can not be determined, then the contributions of the lowest wage classes are to be stricken out until only the highest amount permissible remains.

## ARTICLE 1291.

If the beneficiary of the invalidity pension has children under 15 years of age, then the invalidity pension shall be increased for each child by one-tenth, but not to exceed one and one-half times the amount of the invalidity pension.

## ARTICLE 1292.

In the two cases stated herewith the share of the insurance institute equals the specified part of the basic amount and of the supplementary increases of the invalidity pension which the one providing the support at the time of his death had received or in the case of invalidity would have received. These cases are the following:

In the case of widows' pensions and widowers' pensions, three-tenths of the basic amount and of the increases;

In the case of orphans' pensions, for one orphan three-twentieths, for each additional orphan one-fortieth of the basic amount and of the increases.

## ARTICLE 1293.

PARAGRAPH 1. The share of the insurance institute in old-age pensions amounts to the following:

	Marks.
In wage class I -----	60 [\$14.28]
In wage class II -----	90 [ 21.42]
In wage class III -----	120 [ 28.56]
In wage class IV -----	150 [ 35.70]
In wage class V -----	180 [ 42.84]

PAR. 2. For contributions of different wage classes the corresponding average shall be granted. If more than 1,200 contributory weeks are proved, then the contributions in excess which have been made in the lowest wage class shall not be considered.

## ARTICLE 1294.

PARAGRAPH 1. The pensions of the survivors may not together amount to more than one and one-half times the invalidity pension which the deceased at the time of death was receiving or in the case of invalidity would have received.

PAR. 2. Orphans' pensions alone may not together amount to more than this invalidity pension.

PAR. 3. If the pensions together add to a higher amount, then they shall be reduced in proportion to their size.

PAR. 4. Grandchildren have a claim only in so far as the highest amount allowable does not accrue to the children.

## ARTICLE 1295.

Whenever one survivor ceases to receive a pension the pensions of the others are raised to the highest amount allowable.

## ARTICLE 1296.

The widow's money shall be equal to 12 times the monthly amount of the widow's pension, and the orphan's settlement 8 times the monthly amount received as orphan's pension.

## ARTICLE 1297.

The pension shall be paid in monthly instalments in advance and rounded upward to full sums of 5 pfennings [1.19 cents].

## X. CESSATION OF THE BENEFITS.

## ARTICLE 1298.

The widow's pension and the widower's pension shall cease in the case of remarriage.

## ARTICLE 1299.

The orphan's pension shall cease as soon as the orphan has completed the fifteenth year of life.

## ARTICLE 1300.

The claim to widow's money expires if the claim has not been filed within one year after the death of the husband.

## ARTICLE 1301.

PARAGRAPH 1. For the month of death and the month during which the payment ceases the pension shall be paid in full, subject to articles 1295 and 1318.

PAR. 2. In cases where there is a part of a month, including in addition to the pension of the insured person that of the survivors, then they shall claim the higher amount.

## ARTICLE 1302.

If at the death of the beneficiary the pension due has not been collected, then those entitled to receive the same are eligible in the order named: The husband or wife, the children, the father, the mother, the brothers and sisters, provided that at the time of his death they were living with the beneficiary in a common household.

## ARTICLE 1303.

PARAGRAPH 1. If an insured person or a person entitled to receive a widow's pension and widower's pension, or widow's money, dies after he has filed his claim, then the following in the order named are entitled to continue the procedure and to receive the amounts due up to the date of death, namely, the husband or wife, the children, the father, the mother, the brothers and sisters, provided that at the time of his death they were living with the one entitled thereto in a common household.

PAR. 2. If the orphan entitled to an orphan's settlement dies before its payment, then the local insurance office at its own discretion shall specify to whom it is to be paid.

## XI. WITHDRAWAL OF THE PENSION.

## ARTICLE 1304.

If the beneficiary of an invalidity pension or widow's pension because of an important change in his condition is no longer an invalid in the meaning of articles 1255 and 1258, then the insurance institute shall withdraw the pension.

## ARTICLE 1305.

If it is to be expected that a course of medical treatment would restore the earning capacity of the beneficiary of an invalidity pension, widow's pension, or widower's pension, then the insurance institute may inaugurate such treatment. In such cases articles 1270, 1271, and 1273 are correspondingly applicable. The relatives of the beneficiaries of widow's pensions or of widower's pensions shall receive no house money.

## ARTICLE 1306.

If the pensioner without legal or other reasonable ground therefor declines to receive the course of medical treatment, and thereby hinders the removal of invalidity, or if he declines without reason to submit to a subsequent investigation or observation carried on in a hospital, then the pension may for the time be withdrawn either wholly or partly: *Provided*, That he has been notified of this consequence.



## ARTICLE 1307.

Widowers' pensions and orphans' pensions which have been granted according to articles 1260 to 1262 shall be withdrawn by the insurance institute as soon as the indigence of the recipient has ceased.

## ARTICLE 1308.

The decision which withdraws the pension shall become effective on the expiration of the month following its communication.

## ARTICLE 1309.

If the invalidity pension or widows' pension has been granted anew or has been granted in the place of a sickness pension, or if an old-age pension is granted, then the time of the previous receipt of the pension by the insured person shall be included in the computation in the same manner as is done for a proved period of sickness (art. 1394, par. 2). During the time of the previous receipt of the pension the claim shall not expire.

## ARTICLE 1310.

If it is proved that the insured person who was considered to have disappeared is still alive, then further payments of the pension shall be suspended. The insurance institute does not need to demand the return of the pension paid without right.

## XII. SUSPENSION OF THE PENSION—CAPITAL SUM SETTLEMENTS.

## ARTICLE 1311.

PARAGRAPH 1. The pension shall be suspended if it is received at the same time as an accident pension granted under the imperial laws herewith and if the two together exceed—

1. In the case of invalidity pensions and old-age pensions, seven and one-half times the basic amount of the invalidity pension;
2. In the case of widow's pensions and widower's pensions three and one-half times, in the case of orphans' pensions three times, the basic amount of the invalidity pensions which the one providing the support at the time of his death was receiving or in the case of invalidity would have received.

## ARTICLE 1312.

PARAGRAPH 1. The pension shall be suspended as long as the beneficiary serves a prison term of more than one month or is placed in a workhouse or in a reformatory.

PAR. 2. If he has relatives in Germany whom he is supporting either wholly or principally from his earnings, then the invalidity pension or old-age pension shall be transferred to them.

## ARTICLE 1313.

The pension shall be suspended—

1. As long as the person entitled thereto customarily remains in a foreign country of his own free will.
2. As long as a foreign beneficiary is expelled from the territory of the Empire on the basis of condemnation in a penal procedure. The same applies to a foreign beneficiary who has been expelled from the territory of a federal State because of condemnation in a penal procedure, as long as he does not stay in another federal State.

## ARTICLE 1314.

The federal Council can suspend the stopping of a pension for foreign border territories or for such foreign States whose legislation guarantees a corresponding relief to Germans or their survivors.

## ARTICLE 1315.

In the meaning of articles 1312 and 1313 German protectorates shall be considered as parts of German territory.

## 1430 WORKMEN'S COMPENSATION AND INSURANCE.

### ARTICLE 1316.

In the case mentioned in article 1313, No. 1, a foreign beneficiary is to receive in settlement an amount equal to three times, or if the matter relates to an orphan's pension an amount equal to one and one-half times, the amount of his annual pension.

### ARTICLE 1317.

With their consent, the same settlements may be granted to those foreigners who—

1. Except in the cases mentioned in articles 1313, No. 2, have left the territory of the Empire on the basis of a decree issued by a German authority.
2. Are entitled to the receipt of the pension on the basis of a decree issued by the Federal Council according to article 1314.

### ARTICLE 1318.

If the prerequisites complied with entitle anyone to several pensions on the basis of the invalidity and survivors' insurance, then the smaller pensions shall be suspended beginning with the date of the combined right.

## XIII. SPECIAL POWERS OF THE INSURANCE INSTITUTES.

### ARTICLE 1319.

If, on new investigation, the insurance institute becomes convinced that pensions have been improperly denied, withdrawn, suspended, or have been determined at too small an amount, then the institute can make a new determination.

### ARTICLE 1320.

The insurance institute need not demand the return of the pension sums which it has had to pay under the law before a decision of legal force has been made.

## XIV. RELATION TO OTHER CLAIMS.

### ARTICLE 1321.

PARAGRAPH 1. Factory funds, seamen's funds, and similar funds can reduce the invalidity, old age, and survivors' relief which they give their members insured under the imperial laws by not more than the value of the imperial benefits of this kind. They must then correspondingly reduce all contributions, or if the employers agree thereto at least those of the members of the fund. The same applies to miners' associations or miners' funds as regards invalidity and old age relief.

PAR. 2. Benefits provided under the rules of the constitution which the fund had granted before the decision of the competent authorities or before January 1, 1891, may not be reduced.

PAR. 3. The requisite orders for this purpose are to be introduced by the funds through amendments to the constitution; these must be approved by the competent authority. The authorities can themselves validly inaugurate amendments if the fund declines the application of the employers affected or of a majority of the members.

PAR. 4. The contributions need not be reduced if the savings made in the payment of these benefits are either necessary in order to cover the outstanding benefits of the fund, or are used according to the constitution and with the approval of the supervisory authority for the purpose of the welfare institutions for establishment officials, workmen, or their survivors.

PAR. 5. In the case of paragraph 3, sentence 2, the Federal Council shall specify the procedure before the imperial supervisory office for private insurance.

## ARTICLE 1322.

PARAGRAPH 1. The benefits which miners' associations or miners' funds grant to the survivors of their members insured according to the imperial law shall be reduced by one-half of the value of the benefits of the same kind given under imperial law. The benefits including the amounts received according to the imperial law must exceed by not less than the amount of the imperial subsidy the benefits granted according to the constitution without the deduction. Corresponding to the reduction of the benefits all of the contributions must be reduced, or if the employers agree thereto at least the contributions of the members. In controversies regarding the extent of the reduction of the contributions the supervisory authority shall decide.

PAR. 2. The constitution may specify that the benefits and correspondingly the contributions may be reduced by a smaller amount or shall not be reduced at all.

PAR. 3. Benefits under the constitution which have been granted before the decision of the competent authorities or before this provision enters into force may not be reduced.

## ARTICLE 1323.

Article 1281, No. 2, and articles 1321 and 1322 shall also be applicable to such funds required to provide invalidity, old age, and survivors' relief for which membership is compulsory under local laws.

## ARTICLE 1324.

Pension claims may only be reduced by deducting from them the following:

Claims for reimbursement on account of accident pension and compensation paid in so far as the insurance institute has a claim thereon according to article 1522, paragraph 3, and article 1542;

Arrears of contributions;

Advances paid out;

Pension amounts paid without right;

Reimbursement of costs of procedure;

Fines imposed by the insurance institutes.

## ARTICLE 1325.

Subject to the conditions of article 119, paragraph 2, widows' money and orphans' settlements may not be transferred, executed, pledged, or reduced.

## SECTION THREE.—CARRIES OF THE INSURANCE.

## A. INSURANCE INSTITUTES.

## I. EXTERNAL FEATURES.

1. *Establishment.*

## ARTICLE 1326.

PARAGRAPH 1. Insurance institutes shall be established for the territory of the federal State for the unions of communes or other parts of territory in accordance with the provisions of the State governments.

PAR. 2. For several federal States or parts of their territory as well as for their unions of communes a common insurance institute may be established.

PAR. 3. Insurance institutes which have been established under the law of June 22, 1899, shall retain their present status subject to the changes permissible under articles 1332 to 1337.

## ARTICLE 1327.

The establishment of the insurance institute shall require the ap-

proval of the Federal Council. If the council refuses this approval, then after a hearing of the State governments affected, it can itself order the establishment of the institute.

#### ARTICLE 1328.

The State government shall specify the seat of insurance institute. If the insurance institute extends over several federal States, then the State governments affected shall specify the seat.

### 2. *Local competence.*

#### ARTICLE 1329.

The insurance institute shall include all persons employed in its district (arts. 153 to 156) who do not comply with their insurance obligation in the special institutes. If persons are employed in an establishment whose seat is located in the district of another insurance institute, then with the approval of the insurance institute affected they may also be insured in the institute of the seat of the establishment. The members of an establishment sick fund must, upon application of the employer, be insured at the seat of the establishment.

#### ARTICLE 1330.

If an establishment which has its seat in Germany employs temporarily persons in a foreign country, these persons must be insured in the insurance institute of the seat of the establishment.

#### ARTICLE 1331.

Subject to other provisions of the Federal Council, the place of employment of foreign vessels engaged in inland navigation shall be considered to be in the seat of that insurance institute in whose district the vessel first enters when crossing the boundary.

### 3. *Changes in the districts.*

#### ARTICLE 1332.

PARAGRAPH 1. The districts of the insurance institute may be changed if the committee (art. 1351) or a federal State affected applies therefor and the Federal Council approves. Before making the decision, the committees and State governments affected shall be heard. In the case of insurance institutes for the districts of unions of communes, their representatives may also apply for changes and must otherwise be heard before changes are made.

PAR. 2. With the approval of the Reichstag insurance institutes may be combined, divided, or dissolved.

#### ARTICLE 1333.

The district of the insurance institute changes automatically whenever the district of the administration is changed.

#### ARTICLE 1334.

If local districts separate themselves from an insurance institute, then the latter shall retain their assets and the existing obligations.

#### ARTICLE 1335.

If an insurance institute is dissolved, then the State governments affected may transfer to the institutes receiving the same, the assets with all the rights and duties, or it may approve the assumption of the same by another institute. Otherwise the assets shall be transferred to the unions of communes or federal States affected, and in the case of common institutes shall be divided pro rata.

#### ARTICLE 1336.

If in the case of the dissolution of a common insurance institute the unions of communes or the federal States can not agree as to the shares of the assets to be turned over to them, then the Federal

Council shall decide herein or in case only unions of communes of one federal State are affected, the highest administrative authority.

ARTICLE 1337.

In controversies between the insurance institutes in regard to the distribution of assets, the decision senate of the Imperial Insurance Office or of the State insurance office (art. 1382) shall decide, in the absence of an agreement to secure a decision from an arbitration court.

II. INTERNAL FEATURES.

1. *Constitution.*

ARTICLE 1338.

The committee shall decide upon the constitution. It must give the seat and district of the insurance institute and must specify the following:

1. Name of the insurance institute;
2. Number of representatives of the employers and of the insured persons in the directorate;
3. Subjects concerning which the co-operation of the representatives of the employers and insured persons in the directorate is required in discussion and in decisions;
4. Number of members, summoning, rights and duties of committees, appointment of its chairman, manner of making decisions, as well as representation as to third parties in the case of article 1354, paragraph 1, sentence 1;
5. Form of the declaration of the decisions of the directorate as well as its signature on behalf of the insurance institute, manner of making decisions of the directorate, and its representation as to third parties;
6. Representation of the institute as against the directorate;
7. Size of allowances according to article 21, paragraphs 2 and 3;
8. Drawing up preliminary estimates;
9. Drawing up and accepting the annual balance sheet in so far as the higher administrative authorities do not provide therefor;
10. Publication of the accounts;
11. Method of publishing notices;
12. Provisions as to the amendment of the constitution.

ARTICLE 1339.

The constitution must have the approval of the Imperial Insurance Office or of the State insurance office (art. 1382). If the approval is to be refused, then the decision senate shall decide thereon. The reasons for the refusal are to be stated. If the approval is refused, then the Federal Council shall decide upon appeal.

ARTICLE 1340.

If the refusal is finally refused, then within the time specified by the Imperial Insurance Office or the State insurance office the committee must decide upon a new constitution. If they reach no decision or if the new constitution is likewise not approved finally, then the Imperial Insurance Office or the State insurance office shall issue a constitution and decree the necessary steps for its execution at the cost of the institute.

ARTICLE 1341.

The constitution may be amended only with the approval of the Imperial Insurance Office or the State insurance office. If the approval is to be refused, then the decision senate shall decide thereon. The reasons for refusal are to be stated. If the approval is refused, the Federal Council shall decide upon appeal.

2. *Directorate.*

## ARTICLE 1342.

The directorate shall administer the institute in so far as the law or constitution do not provide otherwise.

## ARTICLE 1343.

The directorate shall have the powers of a public authority. One or more officials of the union of communes or of the federal State for which the insurance institute has been created shall conduct its business.

## ARTICLE 1344.

PARAGRAPH 1. The unions of communes or highest administrative authority shall, according to the provisions of the State law, appoint the official members of the directorate and shall designate one of them as chairman.

PAR. 2. If the insurance institute extends over several unions of communes, then the highest administrative authority or the unions of communes designated by the latter shall take this action.

PAR. 3. If the insurance institute extends over several federal States, then the highest administrative authorities affected shall decide in regard to the appointment of the official members of the directorate.

## ARTICLE 1345.

Article 33 shall not apply as regards the service relations of the official members of the directorate (art. 1344).

## ARTICLE 1346.

PARAGRAPH 1. As nonofficial members, there shall belong to the directorate representatives of the employers and of the insured persons in equal numbers. They must reside in the district of the insurance institute.

PAR. 2. If the number of official members is greater than the number of nonofficial members, then in making the decisions that number of official members shall separate themselves as will arrange that the nonofficial members are in a majority. The constitution shall regulate the details hereto.

## ARTICLE 1347.

The constitution can provide that still other salaried or unsalaried members shall belong to the directorate. The committee shall specify the conditions of appointment of the salaried members. Article 1346, paragraph 2, is here correspondingly applicable.

## ARTICLE 1348.

In so far as the office, accounting and subordinate officials employed by the institute who are not substitutes are not State or communal officials according to State law, then the State government shall confer upon them the rights and duties of State or communal officials.

## ARTICLE 1349.

The insurance institute shall provide for the salary, etc., of the officials and subordinates as well as their survivors.

## ARTICLE 1350.

The directorate shall publish in the *Reichsanzeiger* and in the official gazette of the highest administrative authority the name, seat, and district of the insurance institute as well as the name of the chairman and, in addition, the changes therein.

3. *Committee.*

## ARTICLE 1351.

PARAGRAPH 1. Each insurance institute shall have a committee. It

shall consist of one-half each of representatives of employers and of the insured persons and shall comprise at least 10 members.

PAR. 2. The latter shall be elected by the insurance representatives in the local insurance offices of the district of the insurance institute, and the representatives of the employers and of the insured persons shall be elected in separate elections.

PAR. 3. The representatives must reside in the district of the insurance institute.

#### ARTICLE 1352.

PARAGRAPH 1. The highest administrative authority shall issue election regulations and shall conduct the election through an authorized representative. If the insurance institute extends over several federal States, the highest authorities affected shall specify which of them shall conduct the same.

PAR. 2. For each representative at least two substitutes shall be elected. They shall take his place if he is unable to fulfill his duties, and, if he leaves the institute, they shall fill the office for the rest of the term in the order of their election.

PAR. 3. In controversies over elections, that authority shall decide which is to issue election regulations.

#### ARTICLE 1353.

The following matters are reserved to the committee:

1. Election of the nonofficial members of the directorate;
2. The determination of the preliminary estimates;
3. The acceptance of the annual balance sheet;
4. The amendment of the constitution.

#### ARTICLE 1354.

PARAGRAPH 1. In purchasing, selling, or mortgaging pieces of ground valued at more than 1,000 marks [\$238], the institute shall be represented by the directorate and by the committee. In so far as matters relate to the purchase at compulsory sales of pieces of ground on which the insurance institute has made loans, the directorate alone shall be authorized to act as representative.

PAR. 2. The directorate must obtain the consent of the committee to form reinsurance federations.

#### ARTICLE 1355.

The preliminary estimates must be placed before the supervisory authority at least two weeks before the committee decides thereon. It must correct the estimate if it violates the law or constitution or endangers the solvency of the insurance institute as regards the legal obligation resting upon it. If the committee does not consider the objections, then the chairman of the directorate must appeal to the supervisory authority (art. 8). He is required to take this action if the supervisory authority demands the same. The decision senate decides thereon.

#### 4. *Administration of the assets.*

##### ARTICLE 1356.

PARAGRAPH 1. The insurance institute must invest at least one-fourth of its assets in bonds of the Empire or of the federal States.

PAR. 2. The institute may invest not more than one-half of its assets otherwise than as specified in articles 26 and 27. For this purpose it shall secure the approval of the Imperial Insurance Office or of the State insurance office (art. 1382).

PAR. 3. If an insurance institute desires to invest more than one-quarter of its assets according to paragraph 2, it shall also secure thereto the approval of the communal union or of the highest administrative authority. If the district of the insurance institute ex-

tends over several States, then the approval of their highest administrative authorities is required.

PAR. 4. Such investment (pars. 2 and 3) is permissible only in securities and in other ways only for purposes of administration, to avoid the loss of assets or for undertakings which exclusively or principally accrue to the welfare of those subject to the insurance.

#### ARTICLE 1357.

Approval (art. 1356, pars. 2 and 3) is required in the following cases:

For the purchase of pieces of ground valued at more than 5,000 marks [\$1,190];

For the erection of buildings valued at more than 10,000 marks [\$2,380];

For the purchase of necessary articles of furniture, the total value of which is more than 5,000 marks [\$1,190].

PAR. 2. Approval is not necessary for the purchase of pieces of ground in the cases mentioned in article 1354, paragraph 1, sentence 2.

#### ARTICLE 1358.

PARAGRAPH 1. The Imperial Insurance Office shall regulate the method and form of the accounting.

PAR. 2. The insurance institutes must make reports to the Imperial Insurance Office in regard to their business and finances according to the order of the latter. The Imperial Insurance Office shall each year draw up a report concerning the total financial operations of the preceding fiscal year and must lay the same before the Reichstag.

### 5. *General provisions.*

#### ARTICLE 1359.

PARAGRAPH 1. If the directorate or the committee has not been formed or if they refuse to carry on their business, then the chairman of the directorate himself or through authorized agents shall conduct the business at the cost of the insurance institute.

PAR. 2. In so far as the election of representatives does not take place or if they decline to perform their duties, the chairman of the local insurance office shall appoint them from among the eligible persons.

## B. SPECIAL INSTITUTES.

### 1. *General provisions.*

#### ARTICLE 1360.

PARAGRAPH 1. Upon application of the competent authority, the Federal Council shall specify which institutes of the Empire, of a federal State, or of a union of communes, shall be admitted as special institutes and the date thereof.

PAR. 2. Upon application the Federal Council may also admit other special institutes.

PAR. 3. The special institutes must comply with the conditions specified in articles 1361 to 1366.

#### ARTICLE 1361.

The benefits of the special institutes must be of at least equal value with the legal benefits of the insurance institute.

#### ARTICLE 1362.

The contributions of the insured persons for the benefits of the imperial law may only exceed one-half of the legal amount (art. 1392) if it is necessary through the special manner of computation of the special institute in variance with article 1389. They may also not be higher than the contributions of the employers.



## ARTICLE 1363.

In the administration of the special institutes insured persons must participate by representatives who have been designated in a secret election. Their number must be not less than that corresponding to the ratio of the contributions of the insured persons to those of the employers.

## ARTICLE 1364.

In computing the waiting term and the pension for a claim according to the imperial law the period of contributions during membership in other special institutes and insurance institutes must be included.

## ARTICLE 1365.

The procedure as regards the claims to invalidity, old age, and survivors' benefits, corresponding to the benefits of the imperial law, must be regulated according to the provisions of this law.

## ARTICLE 1366.

If the special institute collects special or increased contributions for the benefits of the imperial law, then they may add these to their other benefits only in so far as they add to each pension of the imperial law at least the amount of the imperial subsidy.

## ARTICLE 1367.

Membership in a special fund institution (*besondere Kasseneinrichtung*) admitted to insurance (arts. 8, 10, and 11 of the invalidity insurance law), or in a special institute, shall be considered as equal to insurance in an insurance institute.

## ARTICLE 1368.

The special institutes receive the imperial subsidy to their benefits according to the imperial law.

## ARTICLE 1369.

For the pension of a person insured in a special institute, that wage class for each week of membership after January 1, 1891, shall be used to which they would have belonged on the basis of their actual wages had they belonged to an insurance institute. If they were at the same time members of a sick fund or a miner's fund, then the wage class shall be arranged according to article 1246, paragraph 2, No. 1 or 3, and article 1247.

## ARTICLE 1370.

If the special institute does not collect the contributions by means of stamps, then for persons leaving, it must certify the duration of their participation and their wage class as well as the duration of the periods of military service and sickness (arts. 1393 and 1394). The Federal Council may specify the form and contents of the certificate.

## ARTICLE 1371.

Persons entitled to insurance in establishments for which a special institute exists may insure themselves only in the latter voluntarily, and in the case of leaving the employment can continue the insurance only in the special institute (art. 1243). Persons subject to insurance engaged in such establishments may, if they leave their employment without becoming subject to the insurance elsewhere, extend their insurance only in the special institute (art. 1244).

## ARTICLE 1372.

In the case of a special institute, the following provisions are correspondingly applicable:

## I. Provisions of Book One concerning—

1. The accounting bureau (art. 103);
2. Legal remedies (arts. 115 to 117);

3. Transferring, assigning, and execution of claims (art. 119);
  4. Time limits (arts. 124 to 134);
  5. Fees and stamp taxes (arts. 137 and 138).
- II. Provisions of Book Four concerning—
6. Medical treatment (arts. 1296 to 1274);
  7. Withdrawal of the invalidity, widows' and widowers' pensions (arts. 1304 to 1309);
  8. Suspension of the pension and settlement in form of a capital sum (arts. 1311 to 1318);
  9. New determination and demand for the return of the pension sums (arts. 1319 and 1320);
  10. The relation of the claims of persons insured under the imperial law to the claims of miners' associations or miners' funds, factory funds, seamen's funds, and similar funds (arts. 1321 and 1322);
  11. Deductions from claims (arts. 1324 and 1325) and transferring, execution, and assigning of widows' money and orphans' settlements (art. 1325);
  12. Changes in the districts (arts. 1322 to 1337);
  13. Obligation regarding the investment of at least one-fourth of the assets in the bonds of the Empire or of the federal States, and the reporting of accounting operations to the Imperial Insurance Office (art. 1356, par. 1, and art. 1358, par. 2);
  14. Payments through the Post Office Department (arts. 1383 to 1386) in so far as the special institutes do not make payments directly;
  15. The general cost and the special cost (arts. 1395 to 1399) and reinsurance federations (art. 1401);
  16. Distributions and payments of the insurance benefits and the transferring of the sums to the post office (arts. 1403 to 1410);
  17. Payment of the contributions for a previous period (arts. 1442 to 1444);
  18. The decision in controversies in the case mentioned in article 1460;
  19. The voluntary additional insurance (arts. 1472 to 1483).
- III. The provisions of Book Five concerning—
20. The relations of the carriers of the sickness and of the accident insurance to the carriers of the invalidity and survivors' insurance (arts. 1518 to 1526);
  21. The relations to other parties liable to pay benefits in so far as they are regulated in articles 1527, 1531, 1536 to 1543.

## ARTICLE 1373.

The Empire or the union of communes affected is liable for the benefits if the special institute serves their establishments; otherwise the federal State of the seat of the establishment is liable. If several federal States participate, then they are liable in shares according to the number of insured persons who at the close of the last fiscal year were employed in the establishments. In like manner, the liability is regulated as concerning the distribution of assets (arts. 1334 to 1336).

## ARTICLE 1374.

PARAGRAPH 1. For the determination of the amount which the special institute shall turn over to the general assets, the contributions shall be decisive (art. 1392). The benefits of the special in-

stitute shall be distributed only in so far as they correspond to the provisions of the imperial law.

PAR. 2. The imperial subsidy shall at the close of each fiscal year be paid over to the special institutes which make their payments themselves without the intervention of the post office.

*2. Special institute of the navigation accident association.*

ARTICLE 1375.

Upon the decision of the Federal Council, the navigation accident association may create on its own liability a special institute corresponding to the provisions of the imperial law. It must include the persons who are employed in the establishments of the association or in single kinds of these establishments and also the undertakers who at the same time are subject to the accident insurance and invalidity, and survivor's insurance. Both groups are insured in the special institute by authority of the law.

ARTICLE 1376.

If the insured persons are called on for contributions, then they are to participate in the administration in the same manner as employers.

ARTICLE 1377.

The employers' share in the contributions may on the average be not less than one-half of the legal contributions (art. 1392). The contributions of the insured persons may not be higher than those of the employers.

ARTICLE 1378.

PARAGRAPH 1. If the contributions of the insured persons are graded, then the pensions for the survivors are to be correspondingly graded.

PAR. 2. The waiting term may not be longer than that of the imperial law.

ARTICLE 1379.

The special institute of the navigation accident association shall have in other respects the same status as other special institutes. Articles 1355 to 1358 shall apply to it without restriction. It shall be subject to the supervision of the Imperial Insurance Office.

ARTICLE 1380.

PARAGRAPH 1. The creation of the special institute, its constitution, and the amendment thereof shall require the approval of the Federal Council. It shall make the decision after having heard the nonpermanent members of the Imperial Insurance Office, elected for the scope of the navigation insurance as representatives of the employers and the insured persons.

PAR. 2. The Federal Council shall specify the date on which the institution shall come into operation.

SECTION FOUR.—SUPERVISION.

ARTICLE 1381.

The Imperial Insurance Office shall conduct the supervision of the insurance institutes.

ARTICLE 1382.

If a State insurance office has been created for a federal State, then it shall conduct the supervision of the insurance institutes which do not extend beyond its territory.

SECTION FIVE.—PAYMENT OF THE BENEFITS—RAISING OF THE FUNDS.

I. PAYMENT THROUGH THE POST OFFICE DEPARTMENT.

ARTICLE 1383.

PARAGRAPH 1. The institute shall make payments upon notification

of the directorate through the Post Office Department and furthermore as a rule through that post office in whose district the payee resides. The payee shall be notified of the paying office by the directorate.

PAR. 2. If the payee removes his residence, he may make application to the directorate or to the post office of his old place of residence to have the payments changed to his new place of residence.

#### ARTICLE 1384.

Every person who is entitled to keep a public seal is authorized to give out and attest the requisite certificates in such payments.

#### ARTICLE 1385.

The highest postal authorities may collect from each insurance institute an advance sum. According to the choice of the insurance institute, it shall be transmitted either quarterly or monthly to the offices designated by the Post Office Department and may not be greater than that amount which the insurance institute will probably have to pay in the current fiscal year.

#### ARTICLE 1386.

The Imperial Insurance Office can specify in what manner payments are to be made to the payees who customarily reside in a foreign country.

### II. RAISING OF THE FUNDS.

#### 1. General provisions.

#### ARTICLE 1387.

PARAGRAPH 1. The Empire, the employers, and the insured persons shall provide the means for the insurance.

PAR. 2. The Empire shall pay subsidies for the pensions, widows' money, and orphan's settlements (art. 1285) actually paid in each year; the employers and the insured persons shall pay for each week of employment subject to insurance (contributory week) current contributions in equal parts (arts. 1432, 1439, 1458).

PAR. 3. The contributory week begins with Monday.

#### 2. Size of the contributions.

#### ARTICLE 1388.

The weekly contributions shall be determined uniformly in advance by the Federal Council at the first for the period up to December 31, 1920, and then afterwards according to the result of the examination (art. 1391) and for a further period of 10 years. Changes shall require the approval of the Reichstag.

#### ARTICLE 1389.

For the determination of the size of the contributions, the annual average contribution shall be computed for the total number of insured persons. It shall be computed in such a manner that the value of all future contributions together with the assets shall cover that amount which is required according to the actuarial computation with the interest and compound interest to defray all future expenditures of the insurance institutes.

#### ARTICLE 1390.

PARAGRAPH 1. The average contributions shall be graded according to the wage classes, otherwise, however, shall be fixed exactly the same in weekly partial amounts for the insured persons of the same wage class.

PAR. 2. The grades shall be arranged according to that burden which results from the assumption that each wage class has a corresponding insurance status in the total number of insured persons and has the same risk, and that for these groups, the pensions, wid-

ow's money, and orphans' settlements will occur in the expected amount in the wage classes.

## ARTICLE 1391.

PARAGRAPH 1. The accounting bureau of the Imperial Insurance Office shall investigate in advance whether the contribution will be sufficient.

PAR. 2. Deficits or surpluses must be equalized through new contributions.

## ARTICLE 1392.

Until further action the following shall be collected as weekly contributions:

	Pfennigs.	
In wage class I -----	16	[\$0.038]
In wage class II -----	24	[.057]
In wage class III -----	32	[.076]
In wage class IV -----	40	[.095]
In wage class V -----	48	[.114]

3. *Periods of military service and of sickness.*

## ARTICLE 1393.

PARAGRAPH 1. Without any requirement that the contributions shall be paid, the following shall be added as contributory weeks of Wage Class II in which the insured person—

1. has been called into service in compliance with his military duties in times of peace, of mobilization, or of war;
2. has voluntarily rendered military service in times of mobilization or of war;
3. has been prevented from following his occupation because of an illness which rendered him incapable of work for the time being; the sickness must be certified.

PAR. 2. These weeks, however, shall only be included in the computation for those persons who were regularly employed in an occupation before that time and were not merely temporarily subject to the insurance.

## ARTICLE 1394.

PARAGRAPH 1. The sickness shall not be included which the insured person has intentionally brought upon himself or has incurred by an action determined as a crime by the verdict of a criminal court or by culpable participation in brawls or disorderly conduct.

PAR. 2. If the sickness continues without interruption for more than one year, its further duration shall not be included.

PAR. 3. The period of convalescence shall be regarded the same as the sickness. The same shall apply for a period of eight weeks in case of inability to work caused by pregnancy or by regular childbirth without complications.

4. *General cost—Special cost.*

## ARTICLE 1395.

The insurance institutes shall independently administer their income and other assets (general assets and special assets). They shall cover therefrom the general cost which all carriers of the invalidity and survivors insurance must jointly defray, and the special costs which fall upon the individual institutes.

## ARTICLE 1396.

PARAGRAPH 1. The general cost consists of the following:

The basic amounts of the invalidity pensions and the subsidies for children's pensions (art. 1291);

The shares of the insurance institutes in the old-age pensions,

widows' pensions and widowers' pensions, orphans' pensions, widows' money and orphans' settlements;

The increases of the pensions resulting from the weeks of military service and weeks of sickness;

The cost of rounding off the pensions upwards.

PAR. 2. All other obligations form, subject to the reservations of article 1478, a special cost of the insurance institute.

#### ARTICLE 1397.

For covering the general cost, each insurance institute shall, beginning with January 1, 1912, set aside in its accounts 50 per cent. of the contributions as general assets. The institution shall credit the interest to the general assets as set aside in the books. The Federal Council shall specify the rate of interest on a uniform basis for the same periods of time as for contributions.

#### ARTICLE 1398.

PARAGRAPH 1. If the examination shows (art. 1391) that the general assets are not sufficient to cover the general cost, or are not necessary thereto, then the Federal Council shall specify for the coming period what shall be the share of the contributions which is to be set aside on the books for the balancing of the deficits or surpluses for the general assets.

PAR. 2. If the Federal Council increases this share, then the approval of the Reichstag is required.

#### ARTICLE 1399.

The existing assets of the insurance institute on hand at the time of the examination may be drawn on to cover the general cost only in so far as they have been set aside on the books for the general cost.

#### ARTICLE 1400.

PARAGRAPH 1. By joint agreement of the directorate and of the committee, the surplus of the special assets over the legal benefits may be applied for the economic welfare of the pensioners and the insured persons as well as for their relatives.

PAR. 2. The consent of the Federal Council is necessary in such cases. It may revoke the consent, if according to the advice of the accounting bureau, the special assets no longer show a sufficiently high surplus.

### 5. *Reinsurance federations.*

#### ARTICLE 1401.

Several insurance institutes may unite in order to carry either wholly or partly the burdens of the invalidity and survivors' insurance in common.

### 6. *Liability for the obligations of the institute.*

#### ARTICLE 1402.

In so far as the assets of the institute are not sufficient to cover its liabilities the union of communes for which the insurance institute has been created is liable to the creditors. If the union of communes is without assets or if the insurance institute has been created for a federal State or parts of it, then the latter shall be liable. If the institute includes several federal States or unions of communes, then these shall be liable according to the number of their population at the time of the last census.

### 7. *Distribution and refunding of the insurance benefits—Transferring amounts to the Post Office Department.*

#### ARTICLE 1403.

PARAGRAPH 1. The accounting bureau of the Imperial Insurance

Office shall apportion pensions, widows' money, and orphans' settlements upon the Empire, upon the general assets, and upon the special assets.

PAR. 2. The increase rates of the invalidity pensions shall be at the cost of the institute to which contributions on this account have been paid. If the institute has determined benefits, parts of which are a cost on the special assets of other institutes, then the latter shall repay to it the amounts in the form of their capitalized value at the close of the fiscal year.

#### ARTICLE 1404.

The accounting bureau shall ascertain for each year and for each insurance institute the capitalized value of the pensions still current which it has certified for payment and the shares thereof which are a cost upon the Empire, upon the general assets and the special assets. The Federal Council shall regulate the computation of the capitalized value.

#### ARTICLE 1405.

Within eight weeks after the expiration of each fiscal year, the highest postal authorities shall communicate to the accounting bureau the amounts which have been paid in the past fiscal year upon authorization of the insurance institutes. According to the standard specified in article 1404, the pension advances shall be distributed upon the Empire, upon the general assets and upon the special assets. The accounting office shall further compute the share of the Empire, and of the general assets in connection with the widows' money and the orphans' settlements. The insurance institutes shall participate in the sum which is a charge on the general assets, each institute in proportion to the share of the total cost specified for its assets.

#### ARTICLE 1406.

PARAGRAPH 1. The accounting bureau shall notify the insurance institutes of the amounts which they have to repay from the share of their assets intended for the general cost and from their special assets. In such case, the accounting bureau shall balance the payments from the post-office advances (art. 1385) with the actual payments and shall deduct the capitalized value which according to article 1403 the individual institutes must repay to each other.

PAR. 2. The figures used as a basis for making the computations shall be stated. An appeal to the Imperial Insurance Office is permissible against the apportionment of the account.

PAR. 3. The size of the amounts which are a cost to the Empire is to be reported to the imperial chancellor.

#### ARTICLE 1407.

The accounting bureau shall notify the highest postal authorities what amounts must be repaid by the Empire and by the individual insurance institutes.

#### ARTICLE 1408.

Within two weeks after the receipt of the notification, the insurance institute must pay the amount to the Post Office Department from the means on hand. If such are not on hand, then the union of communes or the federal States shall advance the same, in case of joint insurance institutes, in proportion to the number of inhabitants at the last census.

#### ARTICLE 1409.

The amount of the advances to the post office (art. 1385) shall be determined for each insurance institute after the receipt of the communication from the highest postal authority (art. 1405) by the accounting bureau for the current fiscal year, and the insurance

## 1444 WORKMEN'S COMPENSATION AND INSURANCE.

institutes and the highest postal authorities shall be notified thereof. Up to that time, the partial amounts of the advances to the post office shall be paid further, for the time being, in the amount of the preceding year. They shall be balanced after determination of the new advance to the post office.

### ARTICLE 1410.

If the claims of the Post Office Department are not promptly covered by the insurance institutes, then upon application of the Post Office Department the Imperial Insurance Office or the State insurance office (art. 1382) shall institute compulsory collection proceedings.

## SECTION SIX.—PROCEDURE AS TO CONTRIBUTIONS.

### I. STAMPS.

#### ARTICLE 1411.

PARAGRAPH 1. For the purpose of collecting the contributions, each insurance institute shall issue stamps containing the designation of the wage class and of the money value.

PAR. 2. The Imperial Insurance Office shall specify the distinguishing marks of the stamps as well as the periods of time for which they shall be issued.

PAR. 3. It may restrict the period of validity of the issued stamps. Within two years after the expiration of the period of validity, stamps which have become invalid may be exchanged at the sales offices.

#### ARTICLE 1412.

The stamps of each insurance institute shall be sold at the post offices of their district and at the special sales offices of the insurance institutes, at their face value.

### II. RECEIPT CARDS.

#### ARTICLE 1413.

The contributions shall be paid by affixing the stamps on the receipt card of the insured person.

#### ARTICLE 1414.

The insured person shall have the receipt card made out for him and must produce it punctually for the affixing and cancellation of the stamps. The local police authorities may require him to do this under penalty of a fine up to 10 marks [\$2.38]. If he has no receipt card or if he refuses to produce it, then the employer may procure the card and deduct the cost thereof at the next wage payment.

#### ARTICLE 1415.

The insured person may at his own cost at any time demand a new card in return for the old.

#### ARTICLE 1416.

PARAGRAPH 1. The receipt card shall contain the year and day of its issue and the contents of the provisions contained in articles 1424, 1425, and 1495. The Federal Council shall specify the other matters.

PAR. 2. The Federal Council may prescribe special cards for self-insurance and for its continuation (art. 1243), and may impose penalties for the unauthorized use of other cards.

#### ARTICLE 1417.

The cost of the cards shall be borne by the insurance institute of the district of issue if it is not procured for the account of the insured person (arts. 1414 and 1415).

#### ARTICLE 1418.

Each card shall contain space for at least 25 weekly stamps. The cards shall be numbered successively for each insured person. The



first card shall have at its head the name of the insurance institute in whose district the insured person is employed at the time of its issue, and each following card the name of the preceding (the original institute). If the name of the institute on a card issued later differs from that on the first card, then the name on the first card shall prevail.

#### ARTICLE 1419.

PARAGRAPH 1. The highest administrative authorities shall specify, subject to the reservation of article 1456, the offices which shall make out the cards and exchange the same (office of issue).

PAR. 2. The imperial chancellor shall specify the office of issue in the German protectorates.

PAR. 3. The office of issue shall compute when a card is returned, according to the stamps affixed, the contributory weeks for the individual wage classes. At the same time there must be given the duration of the military service proved and of the sickness certified, which have occurred during the time of the validity of the card. The office of issue shall certify to the owner of the card the totals.

PAR. 4. The cost for the forms of the certificates concerning the computation shall be borne by the insurance institute of the district of issue.

PAR. 5. The imperial chancellor shall specify who shall bear the cost for the receipt cards and for the forms of the certificates in the German protectorates.

#### ARTICLE 1420.

The cards must within two years after their date of issue be handed in for exchange. If this is not done, then in case of controversy the insured person must prove that the claim has been kept alive.

#### ARTICLE 1421.

PARAGRAPH 1. Receipt cards which have been lost, made unserviceable, or destroyed shall be replaced by new cards.

PAR. 2. Contributions which can be proved to have been made shall be transferred in certified form; the insurance institute affected shall be heard in advance if the card which has become unserviceable is not produced, and in each case shall be notified later.

#### ARTICLE 1422.

The insured person may appeal to the local insurance office against the contents of the certification (art. 1419, par. 3) and against the transfer or the refusal thereof (art. 1421, par. 2). The insurance institutes may also protest against the transfer (art. 1421, par. 2). The local insurance office shall decide finally.

#### ARTICLE 1423.

PARAGRAPH 1. The cards which have been handed in shall be transmitted to the insurance institute of the district. After verifying and correcting the entries on the outer side the institute shall forward them to the original institute (art. 1418).

PAR. 2. The original institute may transfer the contents of all cards of the same insured persons to a collective card and preserve the latter instead of the single cards.

PAR. 3. The Federal Council shall specify the details herewith. It shall also specify when and in what respects receipt cards are to be destroyed.

#### ARTICLE 1424.

The cards may contain only the statements prescribed by law and may carry no special marks; above all the card may not contain anything in regard to the conduct or services of the holder. Cards which violate this provision must be retained by each authority

## 1446 WORKMEN'S COMPENSATION AND INSURANCE.

receiving them and must be replaced by new cards. The contributions proved shall be transferred in certified form. The insurance institutes affected shall be notified hereof.

### ARTICLE 1425.

PARAGRAPH 1. No one may retain a receipt card against the will of the owner. This shall not apply for the competent offices if they retain cards for the purpose of exchange, of correction, of computation, of transfer, or supervision of the contributions, or in a collection procedure.

PAR. 2. Whoever retains cards in violation of this provision is responsible to the owner for the damages arising therefrom. The local police authority shall collect the card and turn it over to the owner entitled thereto.

## III. PAYMENT OF CONTRIBUTIONS THROUGH THE EMPLOYER—PROOF OF MILITARY SERVICE AND OF SICKNESS.

### ARTICLE 1426.

PARAGRAPH 1. The employer who has employed the insured person through the contributory week shall pay the contribution for himself and for the insured person.

PAR. 2. If several employers employ the insured person during the week, then the first of them shall pay the whole amount. If neither he nor the insured person himself has paid the contribution (art. 1439), then the next employer must pay the contribution, but can demand reimbursement from the first employer. If the insured person is employed in occupations subject to insurance at the same time by several employers, then they shall all be liable as joint debtors.

### ARTICLE 1427.

PARAGRAPH 1. If the actual time of work can not be determined, then the contribution is to be paid for the time which is approximately requisite for the work. In case of controversy, upon application of one party the local insurance office shall decide finally.

PAR. 2. The insurance institute may, with the approval of the Imperial Insurance Office or of the State insurance office (art. 1382), issue special regulations for the computation.

### ARTICLE 1428.

PARAGRAPH 1. The employer shall pay the contributions at the time of the wage payment by affixing for the duration of the employment, stamps according to the wage class of the insured person on the receipt card. The cards shall be issued by the insurance institute of the place of employment.

PAR. 2. The employer must procure the cards at his own expense.

PAR. 3. If a payment of wages does not take place, the stamps are to be affixed at the latest when the employment ceases.

### ARTICLE 1429.

In the case of insured persons who by contract are obliged to work for the employer for at least a quarter of a year, the employer may affix the stamps at another time, at the latest in the last week of each quarter. In every case the stamps are to be affixed at the end of the employment.

### ARTICLE 1430.

The insurance institute may permit the employers to affix the stamps at another time.

### ARTICLE 1431.

The stamps must be canceled. As the date of cancellation, the last day of that period shall be given to which the stamp applies. The

Federal Council shall specify the details in this connection, and shall impose penalties for contraventions.

ARTICLE 1432.

PARAGRAPH 1. The persons subject to the insurance must at the time of payment of wages permit the deduction from their cash wages of one-half of the contributions, and whoever is insured at a higher amount than the wage class specified in the law, without having agreed with the employer as to the insurance in a higher wage class, must also permit the deduction of the excess amount. Only in this way may the employers reimburse themselves for the share of the contribution of the insured persons.

PAR. 2. The deductions are to be distributed evenly upon the wage periods.

ARTICLE 1433.

If deductions are not made at the time of a wage payment, then they may be made only at the time of the next payment, unless the employer through no fault of his own at a later time pays valid contributions (art. 1442).

ARTICLE 1434.

Payments on account shall not be considered as wage payments in the meaning of articles 1428, 1432, and 1433. In every case, however, the stamps are to be affixed in the last week of each quarter.

ARTICLE 1435.

PARAGRAPH 1. If they pay the contributions in stamps, the employers against whom an order of the local insurance office, according to article 398, has been issued may make wage deductions only for the period for which they have already paid arrears of contributions and can prove the same.

PAR. 2. Where a collection procedure is in existence, the order under article 398 shall also be applicable for the contributions of the invalidity and survivors' insurance. The insured persons must in such cases themselves pay their share of the contribution on the pay days.

ARTICLE 1436.

The Federal Council shall regulate the collection of the contributions for persons subject to insurance according to articles 1228 and 1229.

ARTICLE 1437.

The highest administrative authorities may specify how the share of the contribution of persons subject to insurance shall be deducted from their pay if the latter consists only of payments in kind or is to be paid by third persons.

ARTICLE 1438.

PARAGRAPH 1. Military service which has been rendered shall be proved by the military papers.

PAR. 2. Weeks of sickness shall be proved by certificates. After the expiration of the sick benefits or of the relief during the convalescence the directorate of the sick fund, of the substitute fund, of the mutual insurance association, or of the aid society created according to provisions of State law shall make out the certificate. Otherwise the directorate of the commune shall perform this act. The local insurance office may require the directorate of the fund or of the mutual insurance association to fulfill this obligation under penalty of fines up to 100 marks [\$23.80].

PAR. 3. For persons employed in Imperial and State establishments the service authority in charge may make out the certificates. In such cases the sick fund is to be released by the local insurance office from the duty of filling out the certificates.

## IV. PAYMENT OF THE CONTRIBUTIONS BY THE INSURED PERSONS.

## ARTICLE 1439.

PARAGRAPH 1. The insured person himself may also pay the full contributions. The employer must reimburse him for one-half thereof, and this shall be one-half of the legal contribution, unless an agreement has been made as to insurance in a higher wage class.

PAR. 2. A claim shall exist only if the stamps have been canceled according to regulations. The claim must be raised not later than at the time of the second wage payment following, unless the insured person through no fault of his own has paid effective contributions at a later time.

## ARTICLE 1440.

PARAGRAPH 1. Subject to the provisions of article 1371, persons voluntarily insured shall make use of the stamps of the insurance institute in whose district they are employed or in which they remain if unemployed. The choice of the wage class shall be made by themselves.

PAR. 2. They may continue the insurance while in a foreign country, and in such cases make use of the stamps of any insurance institute which they prefer.

PAR. 3. Stamps of an insurance institute may not be used for the extension of the insurance in a special institute (art. 1371).

## ARTICLE 1441.

Whoever insures himself voluntarily during an employment for compensation but not paid in cash, or in case of a temporary employment (arts. 1227 and 1232), shall have a claim to the share of the contribution of the employer. The latter may decline to refund more than he is legally required (arts. 1245 to 1247).

## V. CONTRIBUTIONS NOT VALID.

## ARTICLE 1442.

PARAGRAPH 1. Compulsory contributions are not valid if they are paid after the expiration of two years, but in case the payment of contributions has not been made without the fault of the insured person, then after the expiration of four years after the date when they are due.

PAR. 2. A fault of the insured person shall not exist if the employer has retained the receipt card and has not exchanged it in compliance with the regulations at the proper time.

## ARTICLE 1443.

Voluntary contributions and contributions in excess of the legal wage class may not be paid for a previous period for more than one year, nor may they be paid after the beginning of permanent or of temporary invalidity, or for the continuation of the invalidity.

## ARTICLE 1444.

PARAGRAPH 1. If the contributions are later on paid within a suitable time, then they shall have the same status as the payment of contributions in the meaning of articles 1442 and 1443, in the following cases:

1. When a warning has been given to an employer by the competent office;

2. When the employer or the insured person has declared to such an office that he is ready to pay arrears.

PAR. 2. There shall not be included in the periods specified in articles 1442 and 1443 those periods of time in which a controversy regarding contributions (arts. 1459 to 1461), or a procedure relating to a claim, to an invalidity pension, old-age pension, widow's pension, or widower's pension, is in question.

PAR. 3. These facts (pars. 1 and 2) shall also interrupt the lapsing of arrears of contributions (art. 29).

ARTICLE 1445.

PARAGRAPH 1. If the stamps on a receipt card properly made out and handed in for exchange at the proper time have been employed according to regulations, then it shall be assumed that an insurance status existed during the contributory weeks covered thereby. This shall not apply if the stamps have been affixed later than one month after the date on which the contributions are due or for the calendar year have been affixed in a larger number than the year contains contributory weeks.

PAR. 2. The insured person may demand from the insurance institute the determination of the validity of the stamps which have been used. If the insurance institute acknowledges the insurance obligation or the right to insurance, then the claim for a pension may not be disallowed on the ground that the stamps have been used without right.

PAR. 3. After the expiration of 10 years after the computation of the receipt cards, the legal validity of the stamps certified in the computation may no longer be contested, unless the insured person or his representatives, or a person required to provide relief for him, has brought about the use of the stamps with a fraudulent intent.

VI. CONTRIBUTIONS PAID IN ERROR.

ARTICLE 1446.

PARAGRAPH 1. Contributions which have been paid under a mistaken assumption that an insurance obligation exists, and the return of which has not been demanded, shall be considered as paid for self-insurance or continuation of insurance if a right thereto existed at the time of payment.

PAR. 2. Within 10 years after their payment, the insured person may demand the return of the contributions, if a valid pension has not already been granted to him and if the use of the stamps has not been made with fraudulent intent.

PAR. 3. The employer may no longer demand the return of the contributions if the value of his share has been returned to him by the insured person or if two years have elapsed since the payment.

VII. COLLECTING THE CONTRIBUTIONS.

ARTICLE 1447.

PARAGRAPH 1. The highest administrative authority may, after a hearing of the insurance institute, order that the sick funds, miners' associations, or miners' funds, or other offices designated by it or local collecting offices of the insurance institute, shall collect the contributions of all or of separate groups of persons subject to the insurance for the account of the institute. The authority may in such cases regulate the duty of the insured person to report himself.

PAR. 2. With the approval of the highest administrative authority, the insurance institute may through its constitution itself order this procedure; in addition a commune or a union of communes, with the approval of the higher administrative authority, may after a hearing of the institute order this to be done through a local regulation.

ARTICLE 1448.

If local collecting offices are to be instituted, then the institute must create them at their own cost and in the places specified by the higher administrative authority.

## ARTICLE 1449.

The insurance institute must grant a collection fee to the offices of collection; in case the parties affected can not agree, the fee shall be fixed by the highest administrative authority.

## ARTICLE 1450.

With the approval of the sick fund the highest administrative authority can also permit the collection of the contributions for the sick fund by the local collecting offices. The fund shall assume a part of the cost. The details in this connection shall be specified by the highest administrative authority after a hearing of the insurance institutes and sick funds affected.

## ARTICLE 1451.

The highest administrative authority shall regulate the powers of the insurance institute as against the offices of collection not created by itself.

## ARTICLE 1452.

In case of voluntary insurance the collection of the contributions may not be prescribed.

## ARTICLE 1453.

PARAGRAPH 1. The highest administrative authority may regulate the details as to the procedure in collecting, using, and accounting of the contributions.

PAR. 2. As a rule the contributions shall be collected at the same time with those of the sick funds on the date when they are due. In the case of insured persons from whom the sick fund collects no contributions, the office of collection shall specify the date. Stamps shall be affixed on the receipt card for the contributions collected. Article 1414 is here correspondingly applicable.

## ARTICLE 1454.

PARAGRAPH 1. Even in cases where the procedure of collection has been specified, the highest administrative authority or the directorate of the insurance office may permit individual employers themselves to pay the contributions by the use of stamps, according to articles 1426 to 1430. These authorizations are to be communicated to the office of collection.

PAR. 2. Authorities of the Empire, of the States, and of the communes may also exclude themselves from the collection procedure. This shall be communicated to the insurance institute and the office of collection.

## ARTICLE 1455.

PARAGRAPH 1. The highest administrative authority may order the following:

1. That sick funds, miners' associations, miners' funds, or local collection offices of insurance institutes shall make out and exchange the receipt cards;
2. That temporary employé (art. 441) shall pay their half of the contribution directly, while the other half shall be paid by the union of communes or the commune, and that the employer shall repay the same; also the corresponding application of articles 453 and following may be ordered.

PAR. 2. For this purpose the insurance institute shall grant a special allowance to the offices designated, and the highest administrative authority shall fix the amount thereof.

## ARTICLE 1456.

PARAGRAPH 1. The procedure of collection may be prescribed for the members of a sick fund by its constitution, for the members of the sick fund of an imperial or a State establishment by the compe-

tent service authorities, and the making out and exchange of receipt cards may be transferred to the fund.

PAR. 2. Article 1449 is here not applicable.

#### ARTICLE 1457.

PARAGRAPH 1. As long as a person is insured in the district of an office of collection, he may deposit his receipt card therein.

PAR. 2. The highest administrative authority, in agreement with the insurance institute, may require the deposit. The local insurance office may require the insured persons to follow this course under penalty of fine up to 10 marks [\$2.38].

### VIII. ROUNDING OFF THE AMOUNTS.

#### ARTICLE 1458.

If the reckoning between the employer and insured persons results in a fraction of a pfennig, then the share of the contribution of the employer shall be rounded off to the full pfennig upward and that of the insured person to the full pfennig downward.

### IX. CONTROVERSIES AS TO CONTRIBUTIONS.

#### ARTICLE 1459.

PARAGRAPH 1. In controversies in regard to the payment of contributions, if such controversy is not first raised at the determination of a pension, the local insurance office shall decide, and upon appeal the superior insurance office shall decide finally. These authorities must follow the principles of the officially published decisions of the Imperial Insurance Office.

PAR. 2. If the matter relates to the interpretation of legal provisions of fundamental importance which have not yet been passed upon, then the superior insurance office shall transmit the matter, together with a statement of the reasons for its own views to the Imperial Insurance Office: *Provided*, That the appellant has applied therefor within the period of appeal. Other persons affected may also make this appeal within one week after they have been given an opportunity to express their opinions. In these cases the Imperial Insurance Office shall decide instead of the superior insurance office.

#### ARTICLE 1460.

If the controversy relates to the question as to which of several insurance institutes is to receive the contributions for specified persons, then upon application the Imperial Insurance Office or the State insurance office shall decide (art. 1382).

#### ARTICLE 1461.

All other controversies between employers and workmen in regard to computation and accounting, payment, and reimbursement of contributions (art. 1426, par. 2, arts. 1432 to 1435, 1437, 1439, and 1441) shall be decided finally by the local insurance office.

#### ARTICLE 1462.

PARAGRAPH 1. If the controversy has been finally decided, then the local insurance office shall take care that contributions not collected in sufficient amounts shall be covered through stamps at a later time. If too many stamps have been collected and the return of them can still be demanded (art. 1446), the local insurance office shall, upon application, secure their return from the insurance institute and repay them to the parties affected. The stamps shall be destroyed and the computation corrected.

PAR. 2. Stamps which are destroyed because they originated from an insurance institute which was not competent must be replaced by

those of the competent institute. Their amount shall be demanded from the institute of issue and paid over to the parties affected.

#### ARTICLE 1463.

Instead of destroying the stamps, the local insurance office may call in the receipt card and have the valid contributions transferred to a newly made out card.

#### ARTICLE 1464.

If the obligation or the right of insurance is finally denied, then, upon their application, the parties affected shall have returned to them the contributions not yet lapsed. Article 1446 shall not be affected hereby.

### X. SUPERVISION.

#### ARTICLE 1465.

The insurance institute shall supervise the punctual and complete payment of the contributions. The local insurance office may in this connection assist the insurance institute with its agreement and with an understanding as to the costs.

#### ARTICLE 1466.

PARAGRAPH 1. The employer must give to the local insurance office and to the directorate of the institute itself, as well as to the authorized agents of both, information in regard to the number of employees, their earnings, and duration of their employment. The employers must produce the books and lists from which these facts can be ascertained, during the time of operation and in their place of business. The insured persons also must give information in regard to the place and duration of their employment, as well as of their earnings.

PAR. 2. Both groups are obliged to hand over to the designated officials and agents, upon demand, their receipt cards and certificates (art. 1419, par. 3) for verification and correction, and a receipt must be given therefor.

PAR. 3. The local insurance office may compel the employers and the insured persons to comply with their duties (pars. 1 and 2), under fines up to 150 marks [\$35.70].

#### ARTICLE 1467.

With the approval of the Imperial Insurance Office, or of the State insurance office (art. 1382), the insurance institute may issue supervisory regulations. These authorities may order the issuance of such regulations, and if such order is not complied with, issue the order themselves. The directorate of the institute may require employers and insured persons to comply punctually with such regulations, under fines up to 150 marks [\$35.70].

#### ARTICLE 1468.

PARAGRAPH 1. If cash expenditures occur on account of the supervision, then they may be imposed upon the employer if he has caused them through neglect of duty. Upon appeal, the superior insurance office shall decide finally.

PAR. 2. Such costs shall be collected in the same manner as communal taxes.

#### ARTICLE 1469.

After agreement with the parties interested, or at the close of a procedure in settlement of a controversy, the receipt cards shall be corrected by the supervisory authorities, by the duly authorized agents, or by the offices of collection.

#### ARTICLE 1470.

With their consent and with an agreement as to the costs, the local insurance office may assist the insurance institutes in regard to



the supervision of pensioners. The decision committee shall make the decision in this connection. If the committee declines, then, on appeal, the superior insurance office shall decide finally.

#### XI. SPECIAL PROVISIONS.

##### ARTICLE 1471.

The Federal Council may replace the provisions of this section in regard to the crews of foreign ships in inland waters by other provisions.

#### SECTION SEVEN.—VOLUNTARY ADDITIONAL INSURANCE.

##### ARTICLE 1472.

PARAGRAPH 1. Every person subject to the insurance and every person entitled to insurance may at any time and in any number affix supplementary stamps of any insurance institute on their receipt cards. They shall thereby obtain a claim for a supplementary pension in case of invalidity.

PAR. 2. The value of the supplementary stamp shall be 1 mark [23.8 cents].

PAR. 3. The claims procured on the basis of supplementary stamps may not lapse.

##### ARTICLE 1473.

PARAGRAPH 1. For every supplementary stamp which the insured person affixes he shall receive as an annual supplementary pension as many times 2 pfennigs [0.48 cents] as at the time of the beginning of the invalidity, years have expired since the use of the supplementary stamp.

PAR. 2. The years shall be counted from the calendar year in which the receipt card has been counted up to the year in which the invalidity began. The value of the supplementary stamps which are not included thereby shall be reimbursed to the insured person or to his survivors (art. 1302).

##### ARTICLE 1474.

PARAGRAPH 1. The supplementary pension shall be paid as long as the invalidity continues (art. 1255). The decision which withdraws the pension shall become effective at the expiration of the month following the communication thereof.

PAR. 2. Article 1254 shall also apply to supplementary pensions.

##### ARTICLE 1475.

The supplementary pension shall always be paid in full sums monthly in advance, each time rounded off upward in sums of 5 pfennigs [1.19 cents], and shall be paid either together with the invalidity pension or separately.

##### ARTICLE 1476.

PARAGRAPH 1. If the supplementary pension does not amount to more than 60 marks [\$14.28] annually, then upon application a single lump sum payment equal to its capitalized value shall be paid.

PAR. 2. If the beneficiaries give up their residence in Germany, then they may be paid off with the capitalized value of the supplementary pension.

PAR. 3. The computation of the capitalized value shall be regulated by the Federal Council.

##### ARTICLE 1477.

Articles 1383 to 1386 shall be applicable as regards the payment of the supplementary pensions and of the single lump-sum settlements.

##### ARTICLE 1478.

PARAGRAPH 1. The receipts from the supplementary stamps shall

be added to the general assets. The expenditures for supplementary pensions form a part of the general cost.

PAR. 2. The general assets shall bear the liability for the obligations arising out of supplementary insurance.

#### ARTICLE 1479.

In order to ascertain the obligations which arise out of the supplementary insurance, the insurance institute shall draw up special summaries from the incoming receipt cards, and these summaries shall show the number and the kind of supplementary stamps used and shall serve as the basis for the accounting bureau.

#### ARTICLE 1480.

Every 10 years (art. 1388) the accounting bureau of the Imperial Insurance Office shall ascertain how high the rate of the pension may be (art. 1473, par. 1). The Federal Council shall determine it accordingly for every 10 years.

#### ARTICLE 1481.

The benefits for a supplementary pension shall be distributed and paid in the same manner as other benefits (arts. 1403 to 1410).

#### ARTICLE 1482.

PARAGRAPH 1. Each insurance office shall issue supplementary stamps.

PAR. 2. The Imperial Insurance Office shall specify the distinguishing marks of the stamps. It may also restrict the duration of their validity. The Federal Council shall specify the details in regard to their cancellation.

#### ARTICLE 1483.

The regulations which apply for the determination of invalidity and survivors' pensions shall apply in a corresponding manner in the procedure for the determination of supplementary pensions.

### SECTION EIGHT.—FINAL PROVISIONS AND PENAL PROVISIONS.

#### I. SICK FUNDS.

#### ARTICLE 1484.

The provisions of this book as regards sick funds (art. 225) shall also be applicable to miners' sick funds.

#### II. SPECIAL PROVISIONS FOR SEAMEN.

#### ARTICLE 1485.

Seamen (art. 1046, par. 1) are to be insured in that insurance institute in whose district is located the home port of the vessel.

#### ARTICLE 1486.

PARAGRAPH 1. The shipowners may pay the contributions for seamen according to the size of the crew of the single vessels as estimated for the accident insurance. The insurance institute shall specify the details in this connection.

PAR. 2. The Federal Council may order a different procedure for the payment of contributions than that provided in this book.

#### III. PENAL PROVISIONS.

#### ARTICLE 1487.

If employers make entries in the reports or statements which they have to make under the provisions of this law or the regulations of the insurance institute, whose incorrectness they knew or under the circumstances must have known, or if they fail to make either wholly or in part the prescribed entries, then the directorate of the institute may impose upon them fines up to 560 marks [\$119].

#### ARTICLE 1488.

PARAGRAPH 1. If the employers neglect to use in due time the

correct stamps for their employees subject to the insurance or to transmit the contributions, then the directorate of the institute may impose upon them fines up to 300 marks [\$71.40]. Independently of the fine and the collection of the arrears, the directorate may require from persons so penalized the additional payment of 100 up to 200 per cent of these arrears. The amount shall be collected in the same manner as communal taxes.

PAR. 2. The same shall apply if employers who have in their service foreign-insured persons do not comply with their duties as specified in article 1233.

PAR. 3. If the employer contests his obligation to pay contributions, then it shall be decided according to article 1459.

#### ARTICLE 1489.

Whoever, contrary to his obligation, does not give notice of the employment of persons subject to the insurance (art. 1447), may be punished by the local insurance office with fines up to 300 marks [\$71.40] in case the action has been intentional, and in case the action has been one of negligence with fines up to 100 marks [\$23.80].

#### ARTICLE 1490.

The following persons shall be punished with fines up to 300 marks [\$71.40], or with arrest, provided that under other legal provisions more severe penalties are not imposed:

1. Employers who purposely deduct from the wages of their employes higher contributions than this law permits;
2. Employers who purposely act contrary to the provisions of article 1435, paragraph 1;
3. Employers who make deductions from wages in the case mentioned in article 1435, paragraph 2, if the local insurance office has issued an order as described in article 398;
4. Employes who purposely deduct more than this law permits;
5. Persons who contrary to law withhold a receipt card from one entitled thereto.

#### ARTICLE 1491.

Insured persons shall be punished with fines up to 300 marks [\$71.40], or with arrest, unless severer penalties are provided according to other legal provisions, if they intentionally demand from employers on account of self-paid contributions more than is permissible, or demand the full share of the contribution from several employers for the same week, or do not use the amount collected for the payment of the contributions, or collect shares of contributions, when they did not pay the full contributions.

#### ARTICLE 1492.

PARAGRAPH 1. Employers shall be punished with confinement in jail if they intentionally do not use for the insurance, shares of contributions which they have deducted from the wages of their employes or which they have received from the latter.

PAR. 2. In addition, penalties up to 3,000 marks [\$714] and the loss of civic rights can also be imposed.

PAR. 3. If mitigating circumstances are present then the fine alone may be imposed.

#### ARTICLE 1493.

The same penal provisions are applicable in the following cases:

1. To the members of the directorate if the employer is a stock company, a mutual insurance association, a registered co-operative society, a guild, or other legal person.
2. To the business directors, if the employer is an association with limited liability.

3. If another type of business corporation is the employer, to all partners personally liable in so far as they are not excluded from the representation.
4. To the legal representatives of employers not legally competent to transact business or partially so, as well as to the liquidators of a business corporation, a mutual insurance association, a registered co-operative society, a guild, or any other legal person.

## ARTICLE 1494.

PARAGRAPH 1. The employer may transfer the duties imposed upon him by this law or by the constitution to the directors of establishments, the supervisory personnel, or other employes of his establishment.

PAR. 2. If such representatives act contrary to those provisions which impose penalties upon the employer, the penalty shall be imposed upon them. In addition to them, the employer is liable to a penalty if—

1. The contravention has occurred with his knowledge.
2. He has not observed the care required customarily in the selection and supervision of his representatives. In this case no other penalty than the fine may be imposed upon the employer.

PAR. 3. The payment of the additional 100 to 200 per cent. of the arrears of contributions (art. 1488) can also be imposed upon the representative. In addition to him, the employer shall be liable for this amount if he is punished under the provisions of paragraph 2 above.

## ARTICLE 1495.

PARAGRAPH 1. Whoever places upon a receipt card either forbidden entries or special marks may be punished by the local insurance office with fines up to 20 marks [\$476].

PAR. 2. The same penalty may be imposed upon the person who falsely fills out the blank spaces (*Vordruck*) on the receipt card or whoever fraudulently alters the words or figures entered in filling out the blank spaces or who knowingly uses such a card.

PAR. 3. Whoever makes entries, marks, or falsifications, with the intention of making known the holder to employers, shall be punished with fines up to 2,000 marks [\$476], or with confinement in jail up to six months. In case of mitigating circumstances arrest may be imposed instead of confinement in jail.

PAR. 4. A prosecution for forgery of documents (arts. 267 and 268, of the Imperial Penal Code) shall only be inaugurated against persons who have made false entries with the purpose of providing for themselves or for others a pecuniary benefit, or with the purpose of causing damage to others.

## ARTICLE 1496.

Penalties of imprisonment for not less than three months and in addition loss of civic rights shall be imposed upon the one who makes counterfeit stamps or alters stamps with the purpose of using them as genuine, or whoever with the same purpose provides himself with counterfeit stamps, or uses or offers for sale or brings them into use.

## ARTICLE 1497.

The same penalty (art. 1496) shall be imposed upon whoever makes use of stamps which have already been used, or procures the same for use again, or offers them for sale, or brings them into use. In case of mitigating circumstances a fine up to 300 marks [\$71.40] or arrest may be imposed.

## ARTICLE 1498.

In the cases mentioned in articles 1496 and 1497 steps must be taken for the seizing of the stamps, even if they do not belong to the person condemned. The same must also occur if no specified person can be prosecuted or condemned.

## ARTICLE 1499.

PARAGRAPH 1. Whoever manufactures without the written authority of an insurance institute or of another authority the stamp, seals, cuts, plates, or other forms which can be used in the manufacture of stamps, or impressions of such forms, or hands the same over to persons other than the insurance institute or the authorities, shall be punished with a fine up to 150 marks [\$35.70] or with arrest.

PAR. 2. In addition to the fine or arrest, the seizing of the stamps, seals, cuts, plates, or other forms may be ordered, even if they do not belong to the person condemned.

## ARTICLE 1500.

On appeal against the penalties imposed by the directorate of the institutes and the local insurance offices the superior insurance office (decision chamber) shall decide finally.

## BOOK FIVE.—RELATIONS OF THE INSURANCE CARRIERS TO EACH OTHER AND TO OTHER BODIES.

## SECTION ONE.—RELATIONS OF THE INSURANCE CARRIERS TO EACH OTHER.

## I. SICKNESS INSURANCE AND ACCIDENT INSURANCE.

## ARTICLE 1501.

PARAGRAPH 1. The obligation of the sick funds (art. 225) to benefits shall not be affected because a carrier of the imperial accident insurance is obligated to compensate damages.

PAR. 2. If according to its obligations under the law or constitution a sick fund grants benefits on account of an accident for a period during which the beneficiary because of the accident had also a claim for accident compensation or still has such claim, then the fund may claim the accident compensation as reimbursement, though for not more than the amount of this claim for compensation, and only within the limits specified in articles 1502 to 1507.

PAR. 3. The sick fund may claim reimbursement from the funeral benefit and accident pension only in so far as this is expressly authorized.

## ARTICLE 1502.

Funeral benefits which the sick fund must pay to a beneficiary under article 203, are to be reimbursed from the funeral benefits which the carrier of the accident insurance has to pay such person.

## ARTICLE 1503.

PARAGRAPH 1. For sick care three-eighths of that basic wage are to be reimbursed on which the pecuniary sick benefit of the beneficiary is based.

PAR. 2. In case of care in a hospital, the same rule shall be followed as for sick care. For maintenance in a hospital one-half of the basic wage shall be used; for this amount reimbursement may be claimed only from the accident pension.

## ARTICLE 1504.

In the case of special apparatus, etc., which is to be granted in accordance with article 187, number 3, reimbursement is to be made up to the amount of the expenditure.

## ARTICLE 1505.

For benefits other than funeral benefits, sick care, apparatus, etc. (art. 1502 to 1504), reimbursement may be claimed only from the accident pension.

## ARTICLE 1506.

PARAGRAPH 1. In so far as reimbursement for benefits of the sick funds may be claimed out of the accident pension, the claim shall be valid only up to one-half of the amount of the pension which is paid during the time for which the claims to sick benefits and pensions coincide.

PAR. 2. If during this time complete maintenance in an institution has been granted to the sick person, and according to the provisions of this book reimbursement is to be made out of the accident pension, then for the duration of such maintenance a claim is valid up to the full amount of the pension. This shall be correspondingly applicable if the carrier of the accident insurance has granted complete maintenance in an institution to a sick person (art. 607).

PAR. 3. In order to determine the extent of the care in a medical institution which the carrier of the accident insurance has granted, on which a claim for reimbursement of the sick fund for its benefits is valid, maintenance in a medical institution shall be computed as equal in value to the full pension.

## ARTICLE 1507.

For the satisfaction of claims for reimbursement by the sick fund, pension amounts in arrears and such amounts for the period of entire maintenance in an institution (art. 1506, par. 2, sentence 1), may be drawn on, up to their full amount, other pension amounts only up to one-half of their amount.

## ARTICLE 1508.

PARAGRAPH 1. A claim for reimbursement (arts. 1501 to 1507) is excluded, if it has not been filed at the latest within three months after the end of the benefit payments with the carrier of the accident insurance.

PAR. 2. If, without any fault on its part, the sick fund has secured knowledge of the fact only after the expiration of this time, that the prerequisites for a claim for reimbursement are present, then it may still file the claim within one week after the day on which it secured this information.

## ARTICLE 1509.

The sick fund may enforce the determination of the accident compensation and also make use of legal means. The expiration of time limits which has occurred without any fault on its part shall not act against it; this, however, shall not apply for procedure time limits in so far as the sick fund itself enforces the procedure.

## ARTICLE 1510.

If a carrier of the accident insurance in accordance with its duty provides compensation for a period during which the beneficiary may also make claim for benefits from the sick fund either according to law or according to constitution, then the fund can deduct from its benefits for this time the accident compensation, in so far as the fund in the case mentioned in article 1501 has a claim for reimbursement on account of these benefits from the accident compensation.

## ARTICLE 1511.

The constitution of the sick fund may provide that during a sickness which is the result of an accident entitled to compensation, for the time during which the accident pension or care in a medical institution is provided, a pecuniary sick benefit shall only be provided

in so far as it exceeds the amount of the accident pension. In such case maintenance in a medical institution shall be computed as equal in value to the full pension.

#### ARTICLE 1512.

PARAGRAPH 1. The sick fund must report within three days to the carrier of the accident insurance every case of sickness which an accident entitled to compensation has brought about, as long as there is sufficient ground for the belief that the loss of earning power due to the accident will extend beyond the thirteenth week; if the patient after the expiration of three weeks after the accident has not yet recovered, then the report must be made not later than the end of the fourth week.

PAR. 2. The employé of the sick fund who conducts its business is required to make a report, if the directorate does not authorize another person to do so. The report to an accident association which is divided into sections, shall be made to the directorate of the section.

PAR. 3. The local insurance office can impose fines up to 20 marks [\$4.76] on account of failure to make a report. On appeal the superior insurance office shall decide finally.

#### ARTICLE 1513.

PARAGRAPH 1. In case of sickness caused by an accident, the carrier of the accident insurance may take over the course of medical treatment. For the duration of the treatment or up to the end of the thirteenth week after the accident the insurance carrier must grant to the patient the same benefits which the sick fund would have to provide under the law or the constitution. In the place of sick care and pecuniary benefit, the accident insurance carrier may provide hospital care and house money, according to articles 184 to 186; with the approval of the patient it may also grant care as provided in article 185.

PAR. 2. The sick fund must reimburse the carrier of the accident insurance to the extent to which the patient could claim sick relief from it under the law or under the constitution and in so far as the carrier of the accident insurance was not itself required to make reimbursement. As compensation for the sick care, three-eighths of the basic wage shall be used, according to which the pecuniary sick benefit of the beneficiary was determined.

#### ARTICLE 1514.

PARAGRAPH 1. The carrier of the accident insurance may transfer to the last sick fund of the injured person the fulfillment of its duties to the injured person and his relatives even beyond the thirteenth week after the accident until the conclusion of the medical treatment to such an extent as it shall deem proper.

PAR. 2. The accident insurance carrier shall reimburse the costs arising therefrom. As reimbursement for medical treatment (art. 558, No. 1), and for care in a medical institution, the amount specified in article 1503 shall be used unless a higher expenditure is proved. In the navigation accident insurance, article 1106, paragraph 2, shall be used for this reimbursement.

PAR. 3. Article 1510 shall be applicable as regards the benefits provided by the sick fund itself.

#### ARTICLE 1515.

PARAGRAPH 1. In controversies between a fund and the carrier of the accident insurance arising out of the transfer of its benefits (art. 1514), the local insurance office shall decide finally, if the matter does not concern a claim for reimbursement.

PAR. 2. Controversies regarding claims for reimbursement arising

out of articles 1501, 1513 and 1514 shall be decided in judgment procedure.

#### ARTICLE 1516.

PARAGRAPH 1. Articles 1512 to 1515 shall also apply for miners' sick funds and substitute funds. For the substitute funds, the requirement to give notice shall be regulated in the constitution.

PAR. 2. For members of miners' sick funds, the basic wage specified according to article 180 shall be applicable, while for members of substitute funds the basic wage of their sick fund shall be used.

#### ARTICLE 1517.

The highest administrative authority may order that persons injured by accidents who are members of sick funds, miners' sick funds, or substitute funds, which are in a position to place the injured persons in institutes with adequate medical equipment, may be placed in another medical institution before the expiration of 13 weeks after the accident only if the directorates of the funds or of the federation of funds approve it.

### II. SICKNESS INSURANCE AND INVALIDITY AND SURVIVORS' INSURANCE.

#### ARTICLE 1518.

PARAGRAPH 1. If an insurance institute inaugurates a course of treatment, then for the duration thereof it shall grant to the patient the same benefits that his sick fund (art. 225) would have to provide under the law or the constitution. If the insurance institute places the patient in a hospital or institution for convalescents, then it can either wholly or partly refuse to pay him the invalidity or widow's pension for the duration of such course of medical treatment.

PAR. 2. The sick fund must reimburse the insurance institute in so far as the patient could claim pecuniary sick benefits from the fund according to the law or the constitution.

#### ARTICLE 1519.

PARAGRAPH 1. The insurance institute which inaugurates a course of treatment may transfer the care of the patient to his last sick fund to such an extent as it deems proper.

PAR. 2. If thereby the fund has imposed upon it expenditures in excess of the extent of its legal or constitutional benefits, then the insurance institute must reimburse the costs in excess thereof.

PAR. 3. The institute must also reimburse the fund for its expenditures during the time for which the fund is no longer required to pay benefits. In such cases reimbursement for sick care and for hospital care shall be the amounts designated in article 1503 if higher expenditure is not proved.

#### ARTICLE 1520.

PARAGRAPH 1. In controversies between a fund and an insurance institute arising out of a transfer of the relief (art. 1519), the local insurance office shall decide finally, if the matter does not concern a claim for reimbursement.

PAR. 2. Controversies relating to claims for reimbursement arising out of articles 1518 and 1519 shall be decided in judgment procedure.

#### ARTICLE 1521.

Articles 1518 to 1520 shall also apply to miners' sick funds and substitute funds. The basic wage shall be specified according to article 1516, paragraph 2.

### III. ACCIDENT INSURANCE AND INVALIDITY AND SURVIVOR'S INSURANCE.

#### ARTICLE 1522.

PARAGRAPH 1. The application to determine a pension for invalidity or to survivors may not be refused for the reason that the inva-



lidity or the death was the result of an accident requiring compensation. The pension is to be paid in full until the accident pension is granted. If the latter is granted, then there shall be paid only the amount in excess of the invalidity of survivors' pension.

PAR. 2. The same rule shall apply in the case of treatment in a medical institution which the carrier of the accident insurance grants. In such case maintenance in a medical institution shall be counted as equal to the full pension.

PAR. 3. If the pension is paid for the time for which the beneficiary has a claim to an accident pension, then the insurance institute may claim as reimbursement the accident pension in so far as the pension which it has granted is not higher. For the extent of the claim for reimbursement and for the extent to which the accident pension may be drawn upon, articles 1506 and 1507 shall be correspondingly applicable.

#### ARTICLE 1523.

The insurance institute may enforce the determination of the accident pension and do so even if, in case of the receipt of the accident pension, the invalidity, old age, or survivors' pension has either wholly or partly ceased. Article 1509 is correspondingly applicable.

#### ARTICLE 1524.

PARAGRAPH 1. If on account of a case of sickness which is the result of an accident entitled to compensation, the insurance institute provides a course of medical treatment which prevents the beginning of invalidity or removes the invalidity, then the carrier of the accident insurance is required to provide reimbursement to the insurance institute for the costs of the course of treatment even if the carrier is thereby released from a burden. Articles 1503 shall be correspondingly applicable for the extent of the reimbursement. If no basic wage has been specified, then the actual expenditure is to be replaced. The insurance institute may not demand reimbursement for a course of treatment during the first 13 weeks after the accident.

PAR. 2. If the insurance institute has provided the course of treatment, then in connection with the compensation claim of the beneficiary this shall be regarded as equal to a corresponding course of treatment provided by the carrier of the accident insurance. The carrier of the accident insurance shall be exempted from its obligation of providing pensions to the relatives of the beneficiary in so far as the insurance institute has paid house money for these persons. If the insurance institute has paid an invalidity or survivors' pension for the period of the course of treatment, then article 1522 shall be in so far applicable.

#### ARTICLE 1525.

If, on account of a case of sickness which is the result of an accident entitled to compensation, the insurance institute has granted a course of treatment which, although it has not prevented the beginning of invalidity or removed the same, has nevertheless released the carrier of the accident insurance from a burden, then article 1524 shall be correspondingly applicable.

#### ARTICLE 1526.

Controversies in regard to claims for reimbursement (art. 1522, par. 3; art. 1524, par. 1; and art. 1525) shall be decided in judgment procedure.

### SECTION TWO.—RELATIONS OF THE INSURANCE CARRIERS TO OTHER BODIES.

#### ARTICLE 1527.

The legal obligation of communes and poor-law unions relating

to the relief of needy persons and other obligations based on law, constitution, contract, or testamentary provision (*letzwilliger Verfügung*) relating to the relief of persons insured according to this law and their survivors shall not be affected by the present law.

## ARTICLE 1528.

If a miners' association, a miners' fund, or a substitute fund, pays benefits as required because of an accident for a time during which the beneficiary had or still has a claim to the imperial accident compensation because of the accident, then the miners' association or the fund may make claim to the accident compensation as reimbursement under corresponding use of article 1501, paragraphs 2 and 3, and of articles 1502 to 1507, and 1516, paragraph 2.

## ARTICLE 1529.

If the carrier of the accident insurance as required makes compensation for the time during which the beneficiary may also claim the benefits of a miners' association, a miners' fund, or a substitute fund, then these funds may deduct the accident compensation from their benefits in so far as they may claim reimbursement in the case of article 1528.

## ARTICLE 1530.

Article 1511 shall be correspondingly applicable to miners' sick funds and substitute funds.

## ARTICLE 1531.

If the commune or poor-law union, in accordance with its legal obligations, gives relief to a needy person for the time during which he had or still has a claim according to this law, then the commune or the poor-law union may claim reimbursement according to articles 1532 to 1537, but, however, up to only one-half of the amount of this claim.

## ARTICLE 1532.

A commune or a poor-law union may claim reimbursement from the benefits of the sick fund (art. 225) only if it has granted relief on account of a sickness upon which the claim of the person relieved against the fund is based.

## ARTICLE 1533.

The following shall be reimbursed:

1. Costs of burial which have been provided at the death of the insured person from the funeral benefit;
2. Relief in case of sickness of the insured person which corresponds to sick care and also in case of treatment in a hospital, according to article 1503, from the benefits corresponding thereto of the sick fund;
3. Other relief from the corresponding benefits of the sick fund. In this case one-half of the basic wage shall be used for the maintenance of the person supported in a hospital. Articles 1506 and 1507 shall be correspondingly applicable as regards the amount of the claim for reimbursement and the extent to which deductions may be made from the pecuniary sick benefit and similar benefits provided in current payments.

## ARTICLE 1534.

The communes or the poor-law unions may only claim reimbursement from the benefits of the accident insurance if the relief has been granted because of the results of an accident.

## ARTICLE 1535.

The following shall be reimbursed:

1. Burial costs which have been paid from the funeral benefits;

2. Relief which corresponds to the sick care which is a duty of the carrier of the accident insurance, and also treatment in a hospital, shall be reimbursed according to the actual expenditure from the corresponding benefits of the carrier;
3. Other relief shall be reimbursed from the accident pension. Articles 1506 and 1507 shall be applicable as regards the extent of the claim for reimbursement and the extent to which deductions may be made from the pension.

## ARTICLE 1536.

For reimbursement from the benefits of the invalidity and survivors' insurance, claims may be made only against pensions. Articles 1506 and 1507 shall be correspondingly applicable as regards the extent of the claim for reimbursement and extent to which deductions may be made.

## ARTICLE 1537.

A commune or poor-law union may also claim reimbursement if the needy person who had a claim to an invalidity pension or old-age pension or survivors' pension dies without having made application for the pension.

## ARTICLE 1538.

PARAGRAPH 1. The funds or communes and poor-law unions (arts. 1528 and 1531) entitled to reimbursement may also enforce the determination of the benefits under the imperial insurance. Article 1509 is here correspondingly applicable.

PAR. 2. The same shall apply to miners' associations and funds which reduce their benefits under the provisions of articles 1321 to 1323.

## ARTICLE 1539.

The claim to reimbursement (arts. 1528 and 1531 to 1537) is excluded if it is not made effective against the carrier of the imperial insurance within six months after the cessation of the relief.

## ARTICLE 1540.

Controversies relating to claims for reimbursement arising out of articles 1528 and 1531 to 1537 shall be decided in judgment procedure.

## ARTICLE 1541.

The provisions of this section as regards communes and poor-law unions shall also be applicable as regards undertakers of establishments and funds which instead of such bodies grant relief to needy persons according to legal obligation.

## ARTICLE 1542.

PARAGRAPH 1. In so far as under this law insured persons or their survivors may claim reimbursement for damage under other legal provisions, and such damage has occurred to them on account of sickness, accident, invalidity, or through the death of the one providing support, then such claim shall be transferred to the carriers of the insurance in so far as the carriers have to grant benefits under this law to those entitled to compensation. This, however, shall apply to those insured against accident and their survivors only in so far as it does not relate to a claim against the undertaker or those of equal status as specified in article 899.

PAR. 2. Article 1503 shall be correspondingly applicable in regard to the reimbursement for sick care and hospital care as well as for medical treatment and care in a medical institution.

## ARTICLE 1543.

PARAGRAPH 1. If a regular court has to pass on such claims (art. 1542), then it shall be required to follow the decision which has

been issued in a procedure according to this law, as to whether and to what extent the insurance carrier is obligated.

PAR. 2. Article 901, paragraph 2, shall be correspondingly applicable as regards the suspension of the procedure before a regular court.

#### ARTICLE 1544.

Articles 1531 to 1533 and 1539 to 1542 shall also be applicable to miners' sick funds and substitute funds. Basic wages shall be specified according to article 1516, paragraph 2.

### BOOK SIX.—PROCEDURE.

#### A. DETERMINATION OF BENEFITS.

##### SECTION ONE.—DETERMINATION BY THE INSURANCE CARRIER.

##### I. INAUGURATION OF THE PROCEDURE.

#### ARTICLE 1545.

PARAGRAPH 1. The benefits from the imperial insurance shall be determined as follows:

1. In the field of the accident insurance, on the initiative of the officials;
2. In other cases, on application.

PAR. 2. The determination shall be by expedited procedure.

#### ARTICLE 1546.

PARAGRAPH 1. If the accident compensation has not been determined on the initiative of the officials, the claim shall be filed with the insurance carrier at the latest within two years after the accident, otherwise the claim will not be considered.

PAR. 2. For the survivors of an insured person who has sailed on a ship which went down or is not accounted for, the time limit shall be reckoned from the date on which according to article 1099 the claim to a survivor's pension has come into existence.

#### ARTICLE 1547.

PARAGRAPH 1. After the expiration of the time limit the claim may still be made effective if—

1. A new result of the accident, which justifies a claim to compensation, has only later become perceptible, or if a result which occurred during the time limit has become perceptible to a considerably greater extent only after the expiration of the time limit, even though it is a gradual and regular development of the ailment;
2. If the beneficiary has been prevented from presenting the claim by circumstances beyond his control.

PAR. 2. In these cases the claim shall be presented within three months after the new result of the accident or the considerable change for the worse has become perceptible, or the hindrance to making the claim has been removed.

#### ARTICLE 1548.

PARAGRAPH 1. If the injured person dies as a result of the accident, the claim to compensation of the survivors, if it has not been determined on the initiative of the officials, shall be presented to the insurance carrier at the latest within two years after the death of the insured person, otherwise the claim will not be considered.

PAR. 2. After the expiration of the time limit the claim may still be brought forward if the prerequisites mentioned in article 1547, paragraph 1, No. 1, are present and the claim has been presented within three months after the removal of the hindrance.

## ARTICLE 1549.

PARAGRAPH 1. The time limits (arts. 1546 to 1548) shall also be considered as observed if the claim has been presented in proper time to a carrier of the accident insurance which is not competent or to a local insurance office.

PAR. 2. The filing of the claim shall be reported to the competent authorities without delay; the party affected shall be notified thereof.

## ARTICLE 1550.

If cases in which voluntary benefits of the insurance carrier would seem called for come to the notice of the local insurance office, the latter shall bring them to the knowledge of the insurance carrier.

## II. SICKNESS INSURANCE.

## ARTICLE 1551.

PARAGRAPH 1. Application for benefits of the sickness insurance shall be submitted to the sick fund or to the party otherwise liable.

PAR. 2. As benefits of the sickness insurance are also considered—

The benefits of sick funds, miners' sick funds, and substitute funds, according to articles 573 and 1083;

The benefits of undertakers, employers, and carriers of the other relief according to articles 577, 1084, and 1085;

The benefits of the communes and of the sick funds, according to articles 942 to 944, article 1087, paragraph 2, article 1088, paragraph 2, and article 1089;

The benefits of the carriers of the accident insurance in case of medical treatment in the instances specified in articles 580, 946, and 1092;

The benefits paid by the sick funds, miners' sick funds, substitute funds, communes, and the undertaker to the carriers of the accident insurance, according to articles 583, 948, and 1094;

The benefits of the sick funds, miners' sick funds, and substitute funds, on the transfer of the relief by carriers of the invalidity and survivors' insurance, according to articles 1519 and 1521, in so far as it does not concern invalidity or survivors' pensions.

The benefits of the undertakers, of communes, and sick funds, if the navigation accident association has according to article 1106, or the branch institute has according to article 1091, transferred to them the relief for the first 13 weeks.

PAR. 3. Further are considered as benefits of the sickness insurance the benefits of the carriers of the accident insurance and of the carriers of the invalidity and survivors' insurance if they assume in the cases of articles 579, 600, 945, 1086, 1090, 1104, 1513, 1516, 1518, and 1521 the benefits from the parties liable specified in paragraph 2.

PAR. 4. This is applicable to the previously designated cases of articles 1083 to 1086, 1092, 1094, 1104, and 1106, only in so far as article 1770 does not provide otherwise for seamen.

## III. ACCIDENT INSURANCE.

1. *Reports of accidents.*

## ARTICLE 1552.

PARAGRAPH 1. The undertaker of an establishment shall report each accident in his establishment if a person employed in the establishment is killed as a result of the accident or is injured in

such a manner that he dies or becomes wholly or partially disabled for more than three days.

PAR. 2. The accident shall be reported within three days after it has come to the notice of the undertaker of the establishment.

#### ARTICLE 1553.

PARAGRAPH 1. The report shall be made either in writing or orally both to the local police authority of the place of the accident and to the office of the insurance carrier specified in the constitution.

PAR. 2. If the accident occurs while on a journey, it may also be reported to the German local police authority in whose district the injured person first resides after the accident.

PAR. 3. If the accident occurs in a foreign country and there is no authority which is competent in Germany according to paragraph 2, it shall be reported to the local police authority of the seat of the establishment in Germany.

#### ARTICLE 1554.

The manager of the establishment or part of the establishment in which the accident occurred may make the reports in the place of the undertaker of the establishment. He is obliged to do so if the undertaker is absent or prevented from so doing.

#### ARTICLE 1555.

The Imperial Insurance Office shall specify the forms for accident reports.

#### ARTICLE 1556.

PARAGRAPH 1. If the accident has not been reported or was reported at too late a date, the directorate of the accident association may fine the person obliged to make the report not more than 300 marks [\$71.40].

PAR. 2. The same also is applicable in the case of article 913, paragraph 1, and the corresponding provisions for agricultural accident insurance (art. 1045). Article 913, paragraphs 2 and 3, articles 1045 and 1223, are here correspondingly applicable.

PAR. 3. On appeal the superior insurance office (decision chamber) decides finally.

#### ARTICLE 1557.

The directorate of establishments administered by the Empire or a federal State shall make the report to their superior authority in the service according to the latter's detailed instructions.

#### ARTICLE 1558.

The provision relating to the reporting of accidents are correspondingly applicable to accidents in the case of an insured activity which does not belong to an insured establishment.

### 2. *Investigation of accidents.*

#### ARTICLE 1559.

PARAGRAPH 1. If an insured person has been killed or injured in such a manner that presumably he will have to be compensated according to this law, the local police authorities of the place of the accident shall as soon as possible investigate the accident.

PAR. 2. The local police authority shall also investigate the accident if a party liable to pay benefits according to this law makes application therefor.

PAR. 3. The beneficiary may make application to the local insurance office for an investigation of the accident. The latter may request the local police authority to comply with the request.

## ARTICLE 1560.

PARAGRAPH 1. Accidents occurring on a journey or in a foreign country shall be investigated by the local police authority to which they have been reported.

PAR. 2. On application of a person affected the superior administrative authority may, according to article 1562, transfer the investigation to another local police authority.

## ARTICLE 1561.

In case of establishments administered by the Empire or a federal State, the superior service authority shall specify who shall investigate the accident.

## ARTICLE 1562.

The following parties may take part in the investigation or be represented in it:

- The injured person or his survivors;
- The carrier of the accident and the sickness insurance;
- The undertaker of the establishment;
- The local insurance office;
- The State industrial inspectors, in the case of accidents in establishments subject to industrial inspection (art. 139, b of the Industrial Code).

## ARTICLE 1563.

PARAGRAPH 1. These parties affected shall be notified in due time of the date of the investigation.

PAR. 2. If the accident association is divided into sections, or if it has appointed district agents (*Vertrauensmänner*), the directorate of the section or the district agent shall be notified.

PAR. 3. Other persons who may be affected shall be called in to the investigation.

PAR. 4. The injured person or his survivors may also call in to the proceedings as assistants, adult relatives or other suitable persons who do not appear before the authorities as a business.

## ARTICLE 1564.

PARAGRAPH 1. The local police authority shall determine the state of affairs. They may make any kind of inquiry with the exception of examination under oath.

PAR. 2. On application of the insurance carrier or of the beneficiary, experts shall be called in; the costs shall be paid by the applicant.

PAR. 3. If the service rooms of an authority or a vessel of the imperial navy is to be inspected, permission must be requested of the competent service authorities or of the officer in command.

## ARTICLE 1565.

The investigation shall especially ascertain—

- The cause, time, place, circumstances, and nature of the accident;
- The name of the person killed or injured, as well as the date and place of his birth;
- The nature of the injury;
- The whereabouts of the injured person;
- The survivors of the person killed, and the relatives of the injured person, who could claim compensation according to this law;
- The amount of the benefits and pensions which the injured person is receiving from the imperial insurance.

## ARTICLE 1566.

The Imperial Insurance Office may decree particular provisions regarding the written record of the investigation proceedings.

## ARTICLE 1567.

PARAGRAPH 1. AS soon as the investigation is terminated the local police authority shall transmit a record of the proceedings to the insurance carrier.

PAR. 2. The parties affected may demand permission to inspect the record of the proceedings and a copy of it.

PAR. 3. Copying fees may be collected for the copy.

3. *Decisions of insurance carriers.*

## A. GENERAL PROVISIONS.

## ARTICLE 1568.

The benefits of the accident insurance shall be determined—

1. By the directorate of the section, if the accident association is divided into sections: *Provided*, That the matters to be settled deal with—
  - a. the medical treatment (art. 558, par. 1), or house care (art. 599),
  - b. the pension for the duration of a presumably temporary disability,
  - c. the treatment in a medical institution.
  - d. the pension for relatives,
  - e. the funeral benefit;
2. In all other cases by the directorate of the association.

## ARTICLE 1569.

The constitution of the accident association may transfer for determination—

1. In the case of article 1568, No. 1—
  - To the directorate of the association,
  - To a committee of the directorate of the association or section,
  - To special commissions,
  - To local representatives (district agents);
2. In the cases of article 1568, No. 2—
  - To the directorate of the section,
  - To a committee of the directorate of the association or section,
  - To special commissions.

## ARTICLE 1570.

The administrative provisions shall designate the authorities which determine the benefits, if another carrier of the accident insurance takes the place of the accident association.

## ARTICLE 1571.

PARAGRAPH 1. If the insurance carrier deems the matter not sufficiently clear, it shall, with reservation of article 1572, make further investigations.

PAR. 2. Where witnesses or experts in the course of legal aid are to be examined under oath the local insurance office shall be requested to do so. If the production of evidence before the local insurance office encounters considerable difficulties, especially on account of the great distance of the residence of witnesses from the seat of the local insurance office, or if there is risk in delay, the lowest court (*Amtsgericht*) may also be requested to act.

PAR. 3. The insurance carrier may apply for the sworn examination of a witness or expert, only if it deems it necessary to have them sworn in so as to obtain a true deposition.

PAR. 4. If the application for a production of evidence has been refused by the lowest court (*Amtsgericht*) the superior State court (*Oberlandesgericht*) decides finally.



## ARTICLE 1572.

PARAGRAPH 1. On application of the insurance carrier the president of the local insurance office must examine the whole matter and express an opinion thereon. He shall decide at his own discretion what investigations are necessary.

PAR. 2. Articles 1637 to 1639 are correspondingly applicable to the competence of the local insurance office.

## ARTICLE 1573.

The parties affected shall be given an opportunity to participate in the examination of witnesses or experts.

## ARTICLE 1574.

PARAGRAPH 1. The provisions of the Code of Civil Procedure (*Zivilprozessordnung*) relating to the obligation to appear as witness or expert, to submit to examination, and the taking of an oath, are correspondingly applicable to the procedure before the judge applied to. The deposition shall not be refused because this law establishes the obligation of secrecy.

PAR. 2. The judge applied to decides if the deposition or the taking of the oath may be refused. An appeal against this decision to the next higher court is permissible within one week according to the provisions of the Code of Civil Procedure.

## ARTICLE 1575.

The provisions of article 1574 are also applicable to the procedure before the local insurance office in so far as articles 1576 to 1579 do not prescribe otherwise.

## ARTICLE 1576.

If application has been made to the local insurance office for the examination of witnesses or experts, the same decides whether the deposition or the taking of the oath may be refused. Against its decision an appeal is permissible within one week to the superior insurance office. The superior insurance office (decision chamber) decides finally.

## ARTICLE 1577.

PARAGRAPH 1. Witnesses or experts may be fined not to exceed 300 marks [\$71.40], only, if—

They do not put in an appearance;

They refuse their deposition or the taking of the oath without giving a reason, or after the reason given has been declared legally irrelevant.

PAR. 2. The local insurance office imposes the fine. Article 1576, sentences 2 and 3, is applicable to the appeal.

## ARTICLE 1578.

PARAGRAPH 1. Military persons belonging to the active service in the army or navy or to one of the colonial forces, shall on application be summoned as witnesses or experts by the military authority.

PAR. 2. If they refuse to give testimony or to take the oath, the military court shall impose the fine on application.

## ARTICLE 1579.

PARAGRAPH 1. The witnesses and experts shall receive fees as in examination before the ordinary court in civil legal disputes.

PAR. 2. On appeal against the determination of the fees, the superior insurance office decides finally.

## ARTICLE 1580.

PARAGRAPH 1. If the undertaker refuses to permit the insurance carrier to make an inspection, the local insurance office decides whether and in what manner the inspection shall take place.

PAR. 2. The local insurance office may itself make the inspection

and use thereby the assistance of the local police authority, or apply for it to the local police authority.

PAR. 3. The appeal effects a stay.

PAR. 4. Article 1564, paragraph 3, is applicable to the inspection in the service rooms of an authority or in a vessel of the imperial navy.

PAR. 5. The highest administrative authority shall specify how far paragraphs 1 to 3 are applicable to establishments subject to mine inspection.

#### ARTICLE 1581.

PARAGRAPH 1. The undertaker shall on demand report within one week to the association the earnings which serve as basis in the computation of the compensation. He shall for this purpose make current entries in regard to the earnings paid to the individual insured persons. The constitution determines particulars hereto.

PAR. 2. If the undertaker does not report the earnings, he may be fined not to exceed 300 marks [\$71.40]. If the report contains statements the incorrectness of which the undertaker has known, or must have known under the circumstances, he may be fined not to exceed 500 marks [\$119].

PAR. 3. The directorate of the association imposes the fine. On appeal the superior insurance office decides finally.

PAR. 4. These provisions are also applicable to persons designated in articles 912, 913, paragraph 1, and article 1220, and in the corresponding provisions for the agricultural and navigation accident insurance (arts. 1045 and 1222). Article 913, paragraphs 2 and 3, 1045, and 1223, are correspondingly applicable.

#### ARTICLE 1582.

PARAGRAPH 1. If on the basis of a medical opinion, the compensation is refused or only a partial pension is granted, the attending physician shall first be heard, unless he has already submitted an adequate opinion.

PAR. 2. If the attending physician has a contract relation to the insurance carrier, which is not merely a temporary relation, another physician shall, on application, be called in.

#### B. DECISION.

#### ARTICLE 1583.

PARAGRAPH 1. The office competent for the determination (arts. 1568 to 1570) shall communicate a written decision if—

1. A compensation is to be granted or refused;
2. A pension on account of change of conditions (arts. 608, 955 and 1115) is to be determined anew;
3. The matters to be settled deal with—
  - medical treatment (art. 558, number 1), or house care (art 599), treatment in a medical institution or pension for relatives,
  - determination of the benefits after the termination of hospital treatment,
  - funeral benefit,
  - discontinuance of an accident pension on account of suspension of the pension,
  - settlement with a beneficiary in the form of a capital sum.

PAR. 2. In the decision which fixes a settlement in the form of a capital sum, the attention of the beneficiary must be called to the fact that after the settlement he has no longer any claim to a pension, even if the consequences of the accident should become aggravated.

## ARTICLE 1584.

If the injured person on account of a change of conditions claims an increase in a pension or the regranting of a pension, he must submit his claim to the insurance carrier or to the local insurance office. The local insurance office shall without delay transmit it to the insurance carrier, and notify the latter of the date of the receipt of the claim.

## ARTICLE 1585.

PARAGRAPH 1. If the pension of an injured person can not yet be fixed as a permanent pension, as regards its amount, the insurance carrier is authorized, during the first two years after the accident, to determine provisionally a compensation and to change the same in accordance with a change of conditions. In the decision it shall be stated that the matter concerns only a provisional pension. The superior insurance office and the Imperial Insurance Office (or the State insurance office) have within the same time limit the right to determine a provisional compensation, in so far as they award a compensation after the insurance carrier has refused the compensation. If the injured person on account of a change in condition claims an increase in a provisional pension, article 1584 shall be applicable.

PAR. 2. The permanent pension shall be determined at the latest on the expiration of two years after the accident. This determination does not assume a change of conditions; likewise the previous determination of the fundamental facts for the computation of the pension is not binding for it.

## ARTICLE 1586.

If, after the expiration of three months, the insurance carrier can not yet communicate a decision, it shall by an ordinary letter inform the beneficiary of the reasons. The time limit shall begin with the date on which the insurance carrier has officially learned of the accident, or in the case the death occurs later, of the death. In the case of the survivors of an insured person who has sailed on a vessel which went down or is not accounted for, the time limit shall be reckoned from the date on which according to article 1099 the claim to a pension has arisen.

## ARTICLE 1587.

PARAGRAPH 1. If, at the beginning of the liability to compensation, the amount of the compensation can not yet be decided on, the insurance carrier shall grant an advance on the compensation and notify the beneficiary by an ordinary letter of this fact.

PAR. 2. In the case of injured persons who, after the expiration of the 13 weeks after the accident, must continue to receive medical treatment, to heal the injuries, at least that compensation shall be determined, which is to be granted until the termination of the medical treatment.

## ARTICLE 1588.

If compensation has been granted, the communication of the decision shall show its amount and the method of computation. In the case of compensation to injured persons, what degree of disability has been assumed shall be specifically stated.

## ARTICLE 1589.

The grounds for the decision shall be stated and it shall be signed. The signature of the president is sufficient.

## ARTICLE 1590.

The decision must contain the statement that it shall come into force unless the beneficiary appeals in due time; the decision shall

state the time limit for the appeal and refer to the rights mentioned in articles 1592, 1595, and 1596.

#### C. PROTEST.

##### ARTICLE 1591.

PARAGRAPH 1. A protest may be made against the decision. The protest shall be submitted in writing to the insurance carrier within one month after the receipt of the decision. Article 129, paragraphs 2 and 3, is here correspondingly applicable.

PAR. 2. Article 128, paragraph 2, is correspondingly applicable in the case of seamen sojourning outside of Europe.

PAR. 3. Minors who have completed their sixteenth year of age may make a protest on their own accord.

##### ARTICLE 1592.

PARAGRAPH 1. The submission in due time of the protest establishes the right of the beneficiary to a personal hearing. The office which is competent for the issuing of the decision determines whether the beneficiary shall be examined before it or before the local insurance office. Articles 1637 to 1639 are correspondingly applicable to the competence of the local insurance office. As long as the beneficiary has not been examined before the competent office, he may demand that he shall be examined before the local insurance office, in the district of which he is living or employed at the time of the examination. If the beneficiary is examined before the administrative body of the association, he shall be recompensed for his cash expenditures and his loss of time. On appeal against the determination of the costs the superior insurance office decides finally.

PAR. 2. The preliminary proceedings shall be submitted to the office which must examine the beneficiary.

##### ARTICLE 1593.

PARAGRAPH 1. The beneficiary who has submitted the protest shall be summoned.

PAR. 2. If he does not put in an appearance at the time fixed without giving adequate reasons for his absence, the records of the proceedings shall be returned immediately to the office competent for the decision, together with a statement concerning the same.

##### ARTICLE 1594.

If the person summoned puts in an appearance, his depositions shall be recorded in writing. In such case the office which is competent for the examination must secure statements of the facts necessary for the determination and of the evidence which are as accurate and as complete as the circumstances permit.

##### ARTICLE 1595.

PARAGRAPH 1. If a physician, whom the insured person of his own choice has selected for his treatment, has not already been heard by the insurance carrier, the local insurance office shall, on application of the insured person to be made at the time of his examination, consult the opinion of a physician who has not been heard until then, if according to the judgment of the local insurance office his opinion may be of importance for the decision.

PAR. 2. If the physician requested by the local insurance office to give his opinion declines to do so, the local insurance office decides whether and from which other physician such an opinion shall be secured.

##### ARTICLE 1596.

PARAGRAPH 1. In any case on demand of the insured person, if he pays the costs in advance, a physician designated by him must be heard as expert. If these costs can not be determined in advance,

the local insurance office may request a lump sum as security for them.

PAR. 2. If, on a final determination made on the basis of the new opinion, a pension has been granted which was refused in the decision, or the partial pension determined in the decision has been increased, the costs shall be refunded to the beneficiary as far as is appropriate. In case of dispute regarding the refund the superior insurance office on appeal decides finally.

#### ARTICLE 1597.

The local insurance office decides how far the existing medical opinions shall be communicated to the new expert (arts. 1595 and 1596); on demand he shall be allowed to inspect the other preliminary proceedings.

#### ARTICLE 1598.

If the examination takes place before the local insurance office, it may also express its opinion regarding the matter. It may, for this purpose, make investigations as far as the evidence is at hand or easily acquired and no considerable expenses are caused.

#### ARTICLE 1599.

The proceedings relating to the protest, together with the preliminary proceedings, shall be transmitted to the officials competent for the determination without delay.

### D. SPECIAL PROVISIONS FOR THE PROTEST AGAINST CHANGES IN PERMANENT PENSIONS.

#### ARTICLE 1600.

If a permanent pension must be determined anew (arts. 608, 955, and 1115), on account of a change of conditions, then articles 1591 to 1599 are applicable in so far as articles 1601 to 1605 do not provide otherwise.

#### ARTICLE 1601.

The examination of the beneficiary takes place before the local insurance office. The preliminary proceedings shall be submitted to the local insurance office.

#### ARTICLE 1602.

After the termination of the investigation, the matter shall be discussed in oral proceedings before the local insurance office with the participation of a representative of the employers and of a representative of the insured persons. The proceedings are not public.

#### ARTICLE 1603.

The president of the local insurance office determines the order in which the representatives shall be called into the proceedings. The superior insurance office may decree general provisions in this connection.

#### ARTICLE 1604.

PARAGRAPH 1. The examination of the beneficiary (art. 1594) and the investigations (art. 1598, sentence 2) may be combined with the oral proceedings if such action seems advisable.

PAR. 2. The association may have a district agent (arts. 678, No. 3, arts. 973 and 1144) or a member of another administrative body act as its representative; the beneficiary may also call into the proceedings as assistants either adult relatives or other proper persons. The representatives of the association and the assistants of the beneficiary must not consist of persons who appear before the authorities as a business.

#### ARTICLE 1605.

PARAGRAPH 1. The local insurance office shall submit an opinion regarding the matter. The opinion shall discuss everything which

## 1474 WORKMEN'S COMPENSATION AND INSURANCE.

according to the judgment of the local insurance office is of importance for the decision of the insurance carrier.

PAR. 2. If the opinion is not based on the concurrence of the president of the local insurance office and the insurance representatives, the dissenting opinions shall be recorded.

### E. FINAL DECISION.

#### ARTICLE 1606.

PARAGRAPH 1. After the receipt of the proceedings on the protest, or after being informed of the nonappearance of the beneficiary at the time set for the proceedings, the office competent for the determination according to articles 1568 to 1570 shall collect the proof which may still be necessary and then issue its final decision.

PAR. 2. If the protest has been submitted too late, it shall be refused as inadmissible by the office designated in paragraph 1 by a final decision.

#### ARTICLE 1607.

PARAGRAPH 1. Articles 1588 and 1589 are applicable to the final decision.

PAR. 2. The beneficiary shall on application be given a copy of the opinion of the local insurance office free of charge. On application he shall also be given copies of the records of the examination of witnesses and experts and also of the medical opinions; the costs shall be paid by the applicant in advance. All copies shall be furnished only in so far as this seems permissible with proper consideration of the beneficiaries. On appeal the superior insurance office decides finally.

PAR. 3. The final decision must contain the statement that it becomes valid unless the beneficiary submits the appeal to the superior insurance office within one month after the receipt of the decision.

PAR. 4. Article 128, paragraph 2, is correspondingly applicable to seamen sojourning outside of Europe.

### F. OTHER PROVISIONS.

#### ARTICLE 1608.

PARAGRAPH 1. If an insurance carrier, before the former decision relating to the amount of the compensation has become valid, makes a new decision, by which the pension on account of a change of condition has been determined anew, the protest and the legal steps against the former decision are also considered as a protest and as legal steps against the new decision.

PAR. 2. A copy of the new decision shall be transmitted to the office with which the older dispute is pending. This office can take up the procedure on the new decision, and on the decision of the older matter decide what compensation is to be granted for the period after the issuing of the new decision.

#### ARTICLE 1609.

In so far as the highest administrative authority has made use of the powers mentioned in article 112, the administrative bodies there specified shall take the place of the local insurance office as regards the latter's duties in the procedure of protest.

#### ARTICLE 1610.

If an accident compensation for such injured persons or their survivors who reside in a foreign country is to be granted, refused, or on account of change of conditions determined anew, a final decision can be given at once without any previous decision or protest.

#### ARTICLE 1611.

The Imperial Insurance Office may specify the particulars in re-

gard to the certification of decisions relating to the fixing of compensation as well as in regard to the signing and making out of decisions and final decisions.

#### ARTICLE 1612.

The local insurance office notifies the insurance carrier if it learns that—

An assumption of the medical treatment by the insurance carrier before the expiration of the waiting term, or a transfer of the medical treatment by the insurance carrier to the sick fund after the expiration of the waiting term is called for;

An accident pension shall be determined anew or withdrawn on account of a change in condition;

A pension shall be suspended.

#### IV. INVALIDITY AND SURVIVORS' INSURANCE.

##### 1. *Submission of claims.*

#### ARTICLE 1613.

Applications for benefits of the invalidity and survivors' insurance shall be directed to the local insurance office; documents used as evidence shall be inclosed.

#### ARTICLE 1614.

Articles 1637 to 1640 are applicable to the competency of the local insurance office.

#### ARTICLE 1615.

PARAGRAPH 1. If payment of a widow's pension is claimed, the amount of which has been determined, then the local insurance office of the place in which the widow at the time of the application for payment resides or is employed is the competent office; articles 1639 and 1640 are here correspondingly applicable.

PAR. 2. If the prerequisite for the receipt of an orphans' settlement is only complied with after the death of the insured person, the competence is regulated by the place of residence of the orphans.

#### ARTICLE 1616.

The highest administrative authority may decree that the claims may also be submitted to other authorities with the effect of articles 1256 and 1263. These authorities shall transmit the claims to the competent local insurance office without delay.

##### 2. *Preparation of the case by the local insurance office.*

#### ARTICLE 1617.

PARAGRAPH 1. The president of the local insurance office ascertains according to his own judgment what is necessary for the elucidation of the facts; article 1652 is here correspondingly applicable.

PAR. 2. The inquiries shall cover all questions which are of importance for the decision of the insurance carrier, especially the following:

The insurance obligation or to the right to insure voluntarily;

The invalidity and the date of its beginning;

The age of the orphans;

The indigence, where a widow's pension or, in the cases of articles 1260 to 1262, an orphan's pension is concerned.

PAR. 3. On application of the beneficiary the opinion of a physician named by him shall be asked if the opinion, in the judgment of the local insurance office, may be of importance for the decision; the beneficiary shall pay the costs in advance. Otherwise articles 1595, paragraph 2, 1596, and 1597 are correspondingly applicable.

#### ARTICLE 1618.

After the termination of the inquiries by the president the matter

shall, in so far as article 1624 does not provide otherwise, be discussed before the local insurance office in oral proceedings, with the attendance of a representative of the employers and a representative of the insured persons.

## ARTICLE 1619.

The provisions of articles 1652 and 1655 are correspondingly applicable to the preparation of the oral proceedings. In particular, the president can order before the oral proceedings, the examination of the applicant and the expression of an opinion as to his health by a physician, and also require the personal appearance of the applicant at the oral proceedings.

## ARTICLE 1620.

Article 1603 is correspondingly applicable to the order in which the insurance representatives shall be called into the proceedings.

## ARTICLE 1621.

Articles 1641 to 1649 are correspondingly applicable in regard to the disqualification and the refusal to serve both of the president of the local insurance office and of the insurance representatives.

## ARTICLE 1622.

PARAGRAPH 1. The oral proceedings are not public.

PAR. 2. Otherwise articles 1662 to 1665, 1667, 1669, and 1672 are correspondingly applicable to the oral proceedings, but article 1654 shall not be applicable.

## ARTICLE 1623.

PARAGRAPH 1. The local insurance office shall submit an expression of opinion in the matter; the expression of opinion shall include everything which, according to the judgment of the local insurance office, is of importance for the decision of the insurance carrier.

PAR. 2. If on account of a crime or intentional misdemeanor (art. 1254) or other violation (arts. 1272 and 1306) the claim may be wholly or partially disallowed or withdrawn, then an opinion shall also be expressed as to the point regarding the extent to which use shall be made of this right.

PAR. 3. Where the opinion is not based on the concurrence of the president of the local insurance office and the insurance representatives the dissenting opinions, together with a statement of the reasons, shall be recorded.

## ARTICLE 1624.

PARAGRAPH 1. An oral proceeding does not take place if the matters to be settled deal with—

Old age pensions;

Orphans' pensions;

Widows' money (*Witwengeld*) and orphans' settlement (*Waisenaussteuer*);

Settlement in the form of a capital sum (arts. 1316, 1317, and 1476);

Cases in which the insurance carrier and the beneficiary are in accord.

PAR. 2. The imperial decree (art. 35, par. 2) may specify other cases in which no oral proceedings take place.

PAR. 3. If an oral proceeding does not take place, then the president of the local insurance office shall submit the expression of opinion.

## ARTICLE 1625.

The president of the local insurance office transmits the proceedings and the opinion to the insurance carrier (art. 1630).



## ARTICLE 1626.

PARAGRAPH 1. Articles 1617 to 1625 are correspondingly applicable if an invalidity, survivors', or supplementary pension is to be withdrawn or if a pension is to be discontinued.

PAR. 2. Articles 1637 to 1640 are correspondingly applicable to the competence of the local insurance office.

PAR. 3. An oral proceeding does not take place if the matter to be dealt with concerns the suspension of a pension (arts. 1311 to 1315, and 1318).

## ARTICLE 1627.

The highest administrative authority can specify the procedure for the preparation of the matter and the expression of an opinion by the local insurance office, in so far as it is not regulated by imperial decree (art. 35, par. 2).

## ARTICLE 1628.

PARAGRAPH 1. Articles 1617 to 1627 are correspondingly applicable if the preparation and expression of an opinion on the matter is transferred to administrative bodies of miners' associations, miners' funds, or special institutes for establishments of the Empire or of the federal States.

PAR. 2. Article 1571, paragraphs 2 to 4, and articles 1573 to 1579 are correspondingly applicable if witnesses or experts are to be examined under oath.

## ARTICLE 1629.

The local insurance office shall notify the insurance carrier if it learns that—

An insured person or a widow can be protected from invalidity by a course of treatment;

The beneficiary of an invalidity, widows', widowers', or supplementary pension can have his earning power restored by a course of treatment;

The invalidity, widows', widowers', or supplementary pension should be withdrawn;

A pension should be suspended.

### 3. *Decision of the insurance carriers.*

## ARTICLE 1630.

PARAGRAPH 1. The benefits of the invalidity and survivors' insurance shall be determined by the directorate of the insurance institute.

PAR. 2. The insurance institute for the district of the local insurance office through which the claim is to be filed is the competent one.

## ARTICLE 1631.

PARAGRAPH 1. A written decision shall be communicated if the claim filed has been recognized or disallowed. It shall contain the reasons therefor and be signed. The signature of the president is sufficient. Article 1611 is applicable to the certification of decisions relating to the determination of benefits and the making out of the decisions.

PAR. 2. If the claim is disallowed the beneficiary shall, on application, receive a copy of the opinion of the local insurance office free of charge. He shall, on application, also receive copies of the records of the examination of witnesses and experts and also of the medical opinions; the costs shall be paid by the applicant in advance. All copies shall be furnished only in so far as this is permissible with due consideration of the beneficiary. On appeal the superior insurance office decides finally.

## 1478 WORKMEN'S COMPENSATION AND INSURANCE.

PAR. 3. If a pension is granted, the decision shall state its amount, the time of its beginning, and the method of its computation.

PAR. 4. The decision must contain the statement that it becomes valid unless the beneficiary, within one month after the receipt of the decision, files an appeal with the superior insurance office. Article 128, paragraph 2, is applicable to seamen sojourning outside of Europe.

### ARTICLE 1632.

If the insurance carrier is not willing to comply with the opinion expressed by the president of the local insurance office regarding the granting of a pension, then the matter shall be returned to the local insurance office for discussion and expression of opinion (art. 1623) if the matter to be settled deals with the insurance obligation, the right to insure voluntarily, or the invalidity.

### ARTICLE 1633.

Articles 1630 to 1632 are correspondingly applicable if a pension is to be withdrawn or stopped.

### ARTICLE 1634.

PARAGRAPH 1. On application of the local insurance office the insurance carrier may charge to a party affected by the decision any costs which he has caused by malice, obstruction, or deceit.

PAR. 2. These costs shall accrue to the treasury of the insurance carrier.

### 4. *Renewal of applications.*

### ARTICLE 1635.

PARAGRAPH 1. If an application for an invalidity pension or for the payment of the widows' pension has been definitely refused, because permanent invalidity could not be proved, or, if an invalidity or widows' pension has been withdrawn with legal effect, because the invalidity existed no longer, then the application may only be repeated one year after the delivery of the decision, and sooner only if it is authentically certified that in the meantime circumstances have arisen which furnish proof of the invalidity.

PAR. 2. If the certification is not produced, then the local insurance office shall refuse the application as being repeated prematurely. The decision is not contestable.

## SECTION TWO.—DETERMINATION BY JUDGMENT PROCEDURE.

### I. PROCEDURE BEFORE THE LOCAL INSURANCE OFFICE.

#### 1. *Competence of the local insurance office.*

### ARTICLE 1636.

In disputes as to the benefits of the sickness insurance the local insurance office (judgment committee), with reservation of article 1661, on application decides in the first instance.

### ARTICLE 1637.

That local insurance office is the competent one in whose district at the time of the application the insured person is residing or is employed.

### ARTICLE 1638.

PARAGRAPH 1. If the insured person has no place of residence or employment in Germany, or if he is dead, or his whereabouts are unknown, his last place of residence or employment in Germany shall be decisive.

PAR. 2. If there is no such place, then the seat of the establishment shall be decisive in which the insured person is employed or was last employed.

## ARTICLE 1639.

If, according to articles 1637 and 1638, several local insurance offices are competent, preference shall be given to the one which was first approached.

## ARTICLE 1640.

PARAGRAPH 1. If the local insurance office believes that another office is competent, it shall transmit the matter to the latter.

PAR. 2. If the latter office also believes it is not competent, then the decision rests with the president of that superior insurance office to which both offices are subordinate; or if there is no such office, with the Imperial Insurance Office (or the State insurance office).

PAR. 3. The decision is final and binding for the lower instances.

*2. Disqualification and rejection of members of the judgment committee.*

## ARTICLE 1641.

The following are disqualified from participation in the judgment committee:

1. Whoever is himself one of the parties to the matter;
2. Whoever is liable for reimbursement to one of the parties;
3. Whoever is or has been married to one of the parties;
4. Whoever is related in direct line or related by marriage, or related in collateral line in the second or third degree, or related by marriage in the third degree to one of the parties;
5. Whoever was summoned in the matter as an authorized agent or assistant of one of the parties, or is entitled to act as his legal representative, or has been so entitled;
6. Whoever has been examined in the matter as a witness or expert;
7. Whoever has participated in the decision as to the benefit as a member of an administrative body of the insurance carrier.

## ARTICLE 1642.

If the president of the local insurance office is at the same time president of an administrative body of the insurance carrier, then he shall also be excluded from participation in the judgment committee in such matters of this insurance carrier in which he was not active formerly.

## ARTICLE 1643.

PARAGRAPH 1. Members of the judgment committee may be rejected for reasons which justify their disqualification as well as on account of prejudice. The rejection on account of prejudice is justified if facts are submitted which may warrant distrust as to the member's impartiality.

PAR. 2. No member may be rejected as prejudiced if the party knew the reason of disqualification before, but brings it forward only after the party has entered into a proceeding before the judgment committee.

## ARTICLE 1644.

The president of the local insurance office shall not be excluded from participation in the judgment committee because he was officially active in the matter in the preliminary proceedings; he shall also not be rejected as prejudiced for this reason.

## ARTICLE 1645.

PARAGRAPH 1. The grounds for the rejection must be reasonable.

PAR. 2. If the party, after having entered into a proceeding, declines to accept a member of the judgment committee as being

prejudiced, he must show that the grounds for the rejection have arisen only at a later time or have only later been ascertained by him.

#### ARTICLE 1646.

If the acceptance of a representative of the insurance is declined, the president decides. If the acceptance of the president is declined, the superior insurance office decides finally. No decision is necessary if the person whose acceptance was declined considers the application for rejection as justified.

#### ARTICLE 1647.

PARAGRAPH 1. The decision which considers the application as justified is final.

PAR. 2. The decision of the president which rejects the application may not be contested by itself alone, but only together with the decision on the main matter.

#### ARTICLE 1648.

Article 1646 is also applicable if a member of the judgment committee himself announces a fact which could justify the declination to accept him, or if doubts arise on the question whether he is disqualified by a legal reason.

#### ARTICLE 1649.

If after the disqualification of members or declination to accept members an insurance authority becomes incapable of making a decision, then the next higher judgment authority shall determine which other authority of equal rank shall decide the matter.

### 3. *Procedure up to the oral proceedings.*

#### ARTICLE 1650.

PARAGRAPH 1. The application described in article 1636 shall be made at the competent local insurance office (arts. 1637 to 1640).

PAR. 2. Article 129, paragraphs 2 and 3, is correspondingly applicable to the application at other authorities.

PAR. 3. Minors who have completed the sixteenth year of their age can make for themselves application independently and prosecute it independently.

#### ARTICLE 1651.

The application for a decision of the local insurance office effects a stay, if the matter in question deals with a settlement in the form of a capital sum (arts. 217 and 218). The settlement can only be confirmed or annulled by judgment procedure.

#### ARTICLE 1652.

PARAGRAPH 1. The president prepares the matter and may collect evidence before the oral proceedings begin.

PAR. 2. According to his own judgment he can make personal inspections, examine witnesses and experts, also under oath procure opinions from physicians and all kinds of official information, and may also call in other insurance carriers.

PAR. 3. Witnesses and experts shall only be sworn in if the president deems it necessary in order to obtain a true deposition. Article 1571, paragraphs 2 to 4; articles 1573, 1574, paragraph 1; articles 1575, 1577 to 1579, and 1580, paragraphs 2 to 5, are here correspondingly applicable; the president decides whether the deposition or taking of the oath may be refused. Within one week an appeal to the superior insurance office against his decision is permissible. The superior insurance office (decision chamber) decides finally.

#### ARTICLE 1653.

PARAGRAPH 1. The contents and on demand a copy of the pro-

ceedings concerning the evidence shall be communicated to the parties affected.

PAR. 2. The president decides in how far medical certificates and opinions shall be communicated. The judgment committee may make the communication later on.

#### ARTICLE 1654.

PARAGRAPH 1. If the claim depends on a status of family or hereditary rights, the president may direct the parties affected to have the status determined by the regular courts.

PAR. 2. At the same time he specifies up to which date the suit must be filed; on application the time limit may be extended.

#### ARTICLE 1655.

PARAGRAPH 1. The president specifies the time of the proceedings and notifies the parties thereof.

PAR. 2. The president may summon witnesses and experts to the oral proceedings and give other orders, especially as to the personal appearance of the applicant.

#### ARTICLE 1656.

Article 1603 is correspondingly applicable to the order in which the insurance representatives shall be called in to the proceedings.

#### ARTICLE 1657.

The president may give a preliminary decision in all matters without oral proceedings.

#### ARTICLE 1658.

PARAGRAPH 1. Against the preliminary decision, that legal remedy may be interposed which would be admissible against the decision, or application may be made within the same time limit for oral proceedings. The preliminary decision shall call attention thereto with a statement of the time limit.

PAR. 2. Minors, who have completed their sixteenth year of age, can make application for oral proceedings independently.

PAR. 3. If the application for oral proceedings was made too late, it shall be refused as inadmissible.

#### ARTICLE 1659.

PARAGRAPH 1. If use has been made of both legal remedies, then the oral proceedings shall take place.

PAR. 2. In regard to the legal remedies and the resumption of the proceedings, the preliminary decision is considered equal to a decision if no application has been made for oral proceedings.

### 4. *Oral proceedings.*

#### ARTICLE 1660.

PARAGRAPH 1. The proceedings before the judgment committee shall be conducted orally and publicly.

PAR. 2. Publicity may be forbidden for reasons of public welfare and morality; the decision shall be made public.

#### ARTICLE 1661.

In public oral proceedings on benefits of the sickness insurance the president alone decides if the matters to be settled deal with—

1. Solely the computation of the determination of the duration and amount of the sick benefit;
2. The granting of hospital care in the place of the sick benefit;
3. The funeral benefit;
4. Benefits the total amount of which is less than 50 marks [\$11.90.]

#### ARTICLE 1662.

The applicant may either appear himself or may have himself

represented; the insurance carrier may also have itself represented. The parties and the representatives of the parties who appear shall be given a hearing.

#### ARTICLE 1663.

PARAGRAPH 1. The local insurance office may exclude authorized representatives and assistants who make a business of appearing before authorities.

PAR. 2. This is not applicable to lawyers and such persons who are permitted to appear before courts (art. 157 of the Civil Code), nor to such persons who are admitted as legal representatives before local and superior insurance offices and do so as a business.

PAR. 3. The superior insurance office decides on the admission, the highest administrative authority on appeal.

PAR. 4. The admission may be refused only if an important reason exists; it may not be refused for reasons based on the religious or political activity of the applicant.

#### ARTICLE 1664.

PARAGRAPH 1. The provisions of the law on the constitution of the courts (*Gerichtsverfassungsgesetz*) relating to the maintenance of order in the session (arts. 176 to 182, and 184) are correspondingly applicable.

PAR. 2. The superior insurance office decides finally on appeals against penalties for acts of disorder.

#### ARTICLE 1665.

PARAGRAPH 1. If the judgment committee does not deem the matter sufficiently elucidated, it shall decide on the necessary proof. The president may be charged with the execution of the decision.

PAR. 2. Articles 1652, paragraphs 2 and 3, and 1653, shall be correspondingly applicable for the production of evidence; and article 1654 for the subsequent order to have a legal status determined by the ordinary law procedure.

#### ARTICLE 1666.

The dispute is considered as settled if the parties come to an agreement as to the disputed claim and costs which may have arisen.

#### ARTICLE 1667.

PARAGRAPH 1. The judgment committee decides according to a majority of votes.

PAR. 2. If no majority can be obtained in the voting on the amount of benefits, then the votes cast for the larger amount shall be added to those cast for the next smaller one until a majority results.

#### ARTICLE 1668.

PARAGRAPH 1. If the judgment committee holds that the claim is established, it shall at the same time determine the amount and the time when the benefit begins.

PAR. 2. If, as an exception, the claim has been allowed because of the reasons stated, then a provisional benefit shall be decreed and its amount determined. The determination of the provisional benefit is final; the provisional payments shall be charged against the claim.

#### ARTICLE 1669.

PARAGRAPH 1. If by order of the president the applicant has appeared at the oral proceedings, then, on demand, he shall be reimbursed for his cash expenditures and loss of time; they may be refunded if he has appeared without any order and the judgment committee deems the appearance necessary.

PAR. 2. On appeal against the decree which determines or disallows the compensation, the superior insurance office decides finally.

PAR. 3. If the applicant has appeared without an order, the reimbursement is considered as disallowed unless the judgment committee explicitly decides that the appearance was necessary. No appeal takes place in this case.

#### ARTICLE 1670.

PARAGRAPH 1. At the proceedings shall be examined on the initiative of the officials whether and to what extent the party who lost the case shall refund the costs of his opponent.

PAR. 2. The amount of these costs shall be determined in the decision.

PAR. 3. On application of the party they shall be collected through the instrumentality of the local insurance office in like manner as communal taxes.

#### ARTICLE 1671.

PARAGRAPH 1. The decision of the judgment committee shall be made public, even if publicity in the proceedings was forbidden.

PAR. 2. It shall contain the reason, be signed by the president, copies made out, and delivered to the parties.

#### ARTICLE 1672.

A written record shall be made of the oral proceedings.

#### ARTICLE 1673.

PARAGRAPH 1. Errors in writing or in the computation and similar evident mistakes which exist in the decision shall always on application or on the initiative of the officials be corrected.

PAR. 2. The president shall decide without oral proceedings whether corrections shall be made.

PAR. 3. If he makes a correction, the authorization shall be noted on the original of the decision and on the copies. The party affected may appeal against the decree to the superior insurance office; the superior insurance office decides finally.

PAR. 4. The decree which refuses a correction may not be contested.

#### ARTICLE 1674.

PARAGRAPH 1. If the decision has wholly or partly omitted a principal or secondary claim submitted by a party, or the matter of costs, on application it shall be supplemented later.

PAR. 2. Such application may be decided without oral proceedings if the matters to be settled deal with a secondary claim or a matter of costs.

PAR. 3. The supplementary decision shall be noted on the original of the decision and the copies.

### II. PROCEDURE BEFORE THE SUPERIOR INSURANCE OFFICE.

#### ARTICLE 1675.

Against final decisions of the carriers of the accident insurance, also against decisions of carriers of the invalidity and survivors' insurance, and likewise against judgments of the local insurance office, the legal remedy of the appeal to the superior insurance office (judgment chamber) is permissible.

#### ARTICLE 1676.

On the appeal in matters of the sickness insurance, the superior insurance office decides for the district of that local insurance office which has issued the contested decision or the president of which has issued the contested preliminary decision.

#### ARTICLE 1677.

PARAGRAPH 1. On the appeal in matters of the accident insurance that superior insurance office decides in whose district the insured person at the time of the filing of the appeal was residing or was

employed. Articles 1638 to 1640 are here correspondingly applicable.

**PAR. 2.** In matters of the navigation accident insurance the home port of the vessel, or the seat of the establishment in which the accident occurred, regulates the competence of the superior insurance office. If the home port is not situated in the district of a superior insurance office, the appeal shall be filed at the superior insurance office which is competent for the seat of the navigation accident association.

#### ARTICLE 1678.

**PARAGRAPH 1.** On the appeal in matters of the invalidity and survivors' insurance, the superior insurance office for the district of that local insurance office, decides which according to articles 1617 to 1627, has participated in the preparation of the matter.

**PAR. 2.** If the preparation and expression of an opinion on the matter has been transferred to administrative bodies of miners' associations, miners' funds, or to special institutes for establishments of the Empire or of federal States, then that superior insurance office which is the competent one in the district of which the seat of these administrative bodies is located.

#### ARTICLE 1679.

**PARAGRAPH 1.** The provisions for the judicial procedure before the local insurance office are correspondingly applicable to the procedure in the case of appeals, in so far as articles 1680 to 1693 do not provide otherwise.

**PAR. 2.** Article 1581 is correspondingly applicable to the obligation of reporting the earnings.

#### ARTICLE 1680.

In matters of sickness insurance the appeal shall be filed with the local insurance office. The local insurance office shall, not later than two weeks afterward, submit it, together with the preliminary proceedings, to the superior insurance office.

#### ARTICLE 1681.

If the insured person or his survivors make application to hear the opinion of a specified physician, the superior insurance office, if it desires to grant the application, may make the hearing dependent on the condition that the applicant shall advance the costs and finally defray them unless the superior insurance office decides otherwise.

#### ARTICLE 1682.

The appeal effects a stay if the matter to be settled deals with—

The resumption of the course of treatment according to articles 603, 604, 952, and 1112.

The settlement in the form of a capital sum (arts. 616, 617, 955, 1117, 1316, 1317, and 1476).

#### ARTICLE 1683.

**PARAGRAPH 1.** If a final decision of the insurance carrier, which on account of a change in conditions reduces or withdraws an accident compensation, has been contested, then the president on application may decree that the execution of the decision shall be wholly or partly suspended in the meantime.

**PAR. 2.** The decree may at any time be revoked. It may not be contested by itself alone, but only together with the decision in the principal matter.

#### ARTICLE 1684.

**PARAGRAPH 1.** The associates shall be called in to the proceedings of the judgment chamber in an order of succession determined in advance. The highest administrative authority determines the particulars. Associates who have been elected to the decision chamber



shall not be called in to the proceedings of the judgment chamber as frequently as others.

PAR. 2. If for special reasons the president desires to depart from the order of succession, he shall state these reasons in the documents.

#### ARTICLE 1685.

PARAGRAPH 1. In matters of the accident insurance as far as possible those associates shall be summoned who are persons belonging to such establishments which in technical and economic features closely resemble the establishment in which the accident occurred, regardless of the regular order.

PAR. 2. This must be done where the matter to be settled deals with accidents in agriculture or mining establishments, in so far as persons belonging to such establishments are available as associates at the superior insurance office. Exceptions are permissible for special reasons which shall be stated in the documents.

#### ARTICLE 1686.

PARAGRAPH 1. The superior insurance office (decision chamber) shall elect for four-year terms at the end of the last year the physicians whom it shall summon as experts, according to need; they shall be elected from its district and, as a rule, after a hearing of the competent medical association. Such physicians, who stand in contract relations to carriers of the accident insurance, or whose services are regularly used by them for the expression of opinions, shall not be summoned as experts in matters of the accident insurance. The same is correspondingly applicable to the invalidity and survivors' insurance. At least half their number shall reside at the seat of the superior insurance office.

PAR. 2. The names of the persons elected shall be published.

PAR. 3. The experts shall, before they express their opinion, be permitted to inspect the documents.

PAR. 4. The highest administrative authority shall regulate the execution of this provision.

#### ARTICLE 1687.

Carriers of the accident insurance not affected by the dispute may by a judgment be required to pay compensation, if they have been summoned to the proceedings.

#### ARTICLE 1688.

If an accident pension is reduced, the superior insurance shall determine finally the extent to which each later pension payment shall be reduced to balance the excess already paid.

#### ARTICLE 1689.

A decision or final decision which determines a settlement by a capital sum, according to articles 616, 617, 955, 1117, 1316, 1317, and 1476, can only be confirmed or abrogated in a judgment procedure.

#### ARTICLE 1690.

PARAGRAPH 1. If the judgment chamber has abrogated the contested decision or final decision on the contested judgment on account of an essential defect in the procedure, it may reassign the matter to the lower authority or to the insurance carrier.

PAR. 2. In connection herewith it may decree the granting of a provisional benefit.

#### ARTICLE 1691.

The provisions of article 1661 relating to the decision by the president alone are not applicable to the procedure in appeals.

#### ARTICLE 1692.

PARAGRAPH 1. If it has been determined that the judgment may not be contested by a review or final appeal (arts. 1695, 1696, and

1700), then the president of the judgment chamber shall, with a reference to the legal provisions, state at the close of the judgment that no further legal remedy is permissible against it.

PAR. 2. If a preliminary decision has been issued (art. 1679 in connection with art. 1657), then it shall be stated that only an application for oral proceedings before the judgment chamber is permissible; the time limit for it is to be designated.

#### ARTICLE 1693.

PARAGRAPH 1. If, in a case in which a review or final appeal is forbidden (arts. 1695, 1696, and 1700), the superior insurance office desires to dissent from a fundamental decision of the Imperial Insurance Office, officially published, or if the matter to be settled in such a case deals with an interpretation of legal provisions of fundamental importance which has not yet been determined, it shall transmit the matter with a justification of its legal interpretation to the Imperial Insurance Office.

PAR. 2. If the superior insurance office desires to dissent in such a case from an officially published decision of the State insurance office to which it is subordinate, it shall then transmit the matter to the State office.

PAR. 3. If the superior insurance office desires to dissent in the same matter from a fundamental decision of the Imperial Insurance Office and of a State insurance office officially published, then the Imperial Insurance Office is competent for the decision.

PAR. 4. The Imperial Insurance Office (or the State insurance office) decides in these cases in place of the superior insurance office. The parties affected shall be notified that the matter has been so referred.

### III. PROCEDURE BEFORE THE IMPERIAL INSURANCE OFFICE (OR THE STATE INSURANCE OFFICE).

#### 1. *Sickness, and invalidity and survivors' insurance.*

#### ARTICLE 1694.

Against the judgments of the judgment chambers a review is permissible in matters of the sickness insurance, as also of the invalidity and survivors' insurance.

#### ARTICLE 1695.

In the case of claims to benefits of the sickness insurance, the review is excluded if the matter to be settled deals with—

1. The amount of the pecuniary sick benefit, the house money, or the funeral benefit;
2. Cases for relief in which the sick person was not disabled or was disabled less than eight weeks;
3. Maternity benefits;
4. Family benefits;
5. Settlement by capital sums;
6. Costs of procedure.

#### ARTICLE 1696.

In the case of claims to benefits of the invalidity and survivors' insurance, the review is excluded if the matter to be settled deals with—

1. The amount, beginning, and termination of the pension;
2. Settlement in the form of a capital sum;
3. Widows' money;
4. Orphans' settlements;
5. Costs of procedure.

#### ARTICLE 1697.

The review may only be based on the fact that—

1. The contested judgment is based on the nonemployment or in-

correct employment of the existing law or on an offense against the clear content of the acts.

2. The procedure had essential defects.

ARTICLE 1698.

PARAGRAPH 1. The provisions for the judgment procedure before the local insurance office are applicable to the procedure of review in so far as articles 1707 to 1721 do not provide otherwise.

PAR. 2. The provisions of articles 1656 to 1659 and 1661 are not applicable.

2. *Accident insurance.*

ARTICLE 1699.

Against the judgments of the judgment chambers a final appeal is permissible in matters relating to the accident insurance.

ARTICLE 1700.

A final appeal is not permitted if the matter to be settled deals with—

1. The medical treatment (art. 558, No. 1) or house care (art. 599);
2. The pension for a disability which at the time of that decision of the court from which the final appeal is taken has been passed over without contest or passed over after a legal determination has been made;
3. Parts of pensions which are to be granted for restricted periods which have already expired;
4. Treatment in a medical institution;
5. Pensions to relatives;
6. Funeral benefits;
7. Provisional pensions (art. 1585, par. 1);
8. Redetermination of a permanent pension on account of change of condition;
9. Settlement in the form of a capital sum;
10. Costs of procedure.

ARTICLE 1701.

PARAGRAPH 1. The provisions relating to the judgment procedure before the local insurance office, as well as articles 1679, paragraph 2, 1681, and 1682, are correspondingly applicable to the procedure of final appeal in so far as articles 1702 to 1721 do not provide otherwise.

PAR. 2. Articles 1656 to 1659 are here not applicable.

ARTICLE 1702.

The employers and insured persons elected from the corresponding field of the accident insurance shall be called in to the proceedings.

ARTICLE 1703.

A carrier of the accident insurance which is not affected by the dispute may be summoned to the final appeal procedure. It can be required by a judgment to pay compensation even if a claim against it has already been disallowed with legal effect.

ARTICLE 1704.

PARAGRAPH 1. If a senate of the Imperial Insurance Office has denied the obligation of an insurance carrier to provide compensation, because another insurance carrier is liable, then the claim against the other insurance carrier may not be disallowed because the insurance carrier which was exempted in the former procedure is liable to compensation.

PAR. 2. If in a previous procedure a State insurance office denied the obligation to compensation, and if another State insurance office intends to disallow the claim because it believes that the in-

insurance carrier exempted in the previous procedure is liable to compensation, then the matter shall be transmitted to the Imperial Insurance Office for a decision.

#### ARTICLE 1705.

PARAGRAPH 1. If the obligation to compensation of an insurance carrier has been determined finally, then on application the Imperial Insurance Office (judgment senate) may discontinue a procedure which, on account of the same accident, is pending against another insurance carrier.

PAR. 2. The State insurance office shall take the place of the Imperial Insurance Office if the districts of the insurance carriers affected do not extend beyond the territory of the federal State.

#### ARTICLE 1706.

PARAGRAPH 1. If claims to compensation against several insurance carriers on account of the same accident have been allowed finally, then the Imperial Insurance Office (judgment senate) shall abrogate the determination which has been incorrectly made. The payments made shall be refunded from the compensation. In case of dispute the claim for reimbursement shall be decided by judgment procedure.

PAR. 2. In place of the Imperial Insurance Office the State insurance office shall decide if the districts of the insurance carriers affected do not extend beyond the territory of the federal State.

### 3. General provisions.

#### ARTICLE 1707.

If an otherwise permissible remedy at law of a party refers also to claims for which the remedy at law is not permitted, then a decision on the case shall be made only if the requirements of the applications which are permissible have been met either wholly or partly.

#### ARTICLE 1708.

PARAGRAPH 1. The Imperial Insurance Office decides as to the remedy at law.

PAR. 2. In the place of the Imperial Insurance Office the State insurance office shall decide if the district of the insurance carrier affected does not extend beyond the territory of the federal State. But in so far as an insurance carrier is affected for which the Imperial Insurance Office or another State insurance office is competent, the Imperial Insurance Office shall decide.

PAR. 3. The decisions shall be made by the judgment senate.

#### ARTICLE 1709.

PARAGRAPH 1. The remedy at law shall be stated in writing, and it shall state the reasons therefor.

PAR. 2. The senate may also alter the judgment contested for reasons other than those stated in the remedy at law.

#### ARTICLE 1710.

With the exception of the cases mentioned in article 1682, the remedies at law affect a stay if they are submitted by the insurance carrier in relation to amounts which must be paid subsequently for the period previous to the issuing of the contested judgment.

#### ARTICLE 1711.

If the contested judgment has been designated incorrectly as a final one (art. 1692), the remedy at law shall be permissible; it shall be submitted within one year after its delivery.

#### ARTICLE 1712.

If a member of the Judgment senate has been disqualified for a reason which justifies his exclusion, or because prejudice is appre-

hended, then the judgment senate shall decide on the application for disqualification. The person disqualified shall not participate in the decision. In the case of a tie vote the application shall be considered as disallowed.

#### ARTICLE 1713.

PARAGRAPH 1. If the president of the senate is of the same opinion as the reporter that the remedy at law is not permissible, or has been submitted at too late a date, he may disallow it without oral proceedings. If the remedy at law has been disallowed as belated, the applicant may within one week after delivery of the decree appeal to the judgment senate; the decree must refer to it.

PAR. 2. Otherwise the decision must be made in a public session after an oral proceeding.

#### ARTICLE 1714.

The Imperial Insurance Office (or the State insurance office) shall decide in regard to the admission of persons to act as legal representatives before the senates as a business (art. 1663, par. 3). Article 1663, paragraph 4, is here correspondingly applicable.

#### ARTICLE 1715.

PARAGRAPH 1. If the judgment contested is abrogated then the senate may either itself decide on the matter, or return it for decision to one of the lower authorities, or to the insurance carrier. In such case it may order the granting of a provisional benefit.

PAR. 2. The office to which the matter is transferred is restricted to the legal grounds of appeal on which the abrogation of the contested judgment is based.

#### ARTICLE 1716.

PARAGRAPH 1. The Imperial Insurance Office and the State insurance office shall publish those of their decisions which are of fundamental importance.

PAR. 2. For the Imperial Insurance Office the imperial chancellor shall specify the manner of publication; the highest administrative authority shall do so for the State insurance office.

PAR. 3. These shall also specify the previous publications to which articles 1693, 1717, and 1718 shall be applicable.

#### ARTICLE 1717.

PARAGRAPH 1. If in a fundamental legal question a senate of the Imperial Insurance Office desires to dissent from the decision of another senate, it shall refer the matter with the reasons for its legal interpretation to the great senate (art. 101). The same is applicable if a senate desires to dissent from the decision of the great senate itself.

PAR. 2. The referring senate shall designate one of its members who, in the decision of the matter, shall as an associate in the great senate, take the place of another member of the same group of this senate. The imperial decree (art. 35, par. 2) shall specify the regular order in which the other members of the great senate shall participate in the decisions.

#### ARTICLE 1718.

PARAGRAPH 1. Article 1717, paragraph 1, shall be correspondingly applicable, if a judgment senate of a State insurance office desires to dissent in a fundamental legal question from an officially published decision of the Imperial Insurance Office.

PAR. 2. The referring senate of the State insurance office shall send one of its members to the proceedings of the great senate; he shall become an associate in the great senate. Moreover, a member of another State insurance office who, according to a detailed regulation of the State government, shall be designated in advance for a

fiscal year, shall be added as a member of this senate. The imperial decree (art. 35, par. 2) shall specify which State insurance office shall delegate the second member. If only one State insurance office exists, it shall send two members.

#### ARTICLE 1719.

The State government shall specify the procedure to be followed if a senate of a State insurance office desires to dissent from the decision of another senate of the same State insurance office.

#### ARTICLE 1720.

PARAGRAPH 1. The decisions of the senates shall be signed by the president, the one reporting and another member of the senate.

PAR. 2. If the president or the one reporting is unable to serve, another member of the senate shall sign for him.

#### ARTICLE 1721.

The decree which rectifies a decision (art. 1673) shall be issued by the president and by those members of the senate who have signed the judgment; the decree can not be contested.

### IV. REOPENING OF THE PROCEDURE.

#### 1. *Grounds for contesting.*

#### ARTICLE 1722.

PARAGRAPH 1. A procedure concluded by a valid decision may be reopened if—

1. The judgment authority was not constituted according to regulations;
2. A person has participated in the decision, who on legal grounds is not permitted to participate unless this hindrance has been successfully brought forward either by a disqualification or remedies at law;
3. A person has participated in the decision although he has been disqualified as being prejudiced, and the disqualification was declared as well founded;
4. A party was not represented in the procedure as required by the provisions of the law, in so far as he has not expressly or tacitly approved the conduct of the dispute.

PAR. 2. In the cases mentioned in numbers 1 and 3 the reopening is not permissible if the ground for contesting could have been made valid by a remedy at law.

#### ARTICLE 1723.

The reopening is also permissible if—

1. A document, on which the decision is based, has been fraudulently made out or was forged;
2. In swearing to testimony or expression of opinion, on which the decision is based, the witness or expert has either purposely or negligently violated the obligation imposed by the oath;
3. The representative of the party, or the opponent or his representative, has obtained the decision by an action punishable with a public penalty;
4. A person has participated in the decision who at the proceedings has violated his official obligations toward the party, in so far as such violation is punishable by a public penalty;
5. A criminal judgment on which the decision is based has been abrogated by another judgment which has become valid;
6. A party subsequently finds or becomes able to use a document which would have brought about a decision more favorable to him.

## ARTICLE 1724.

The reopening is only permissible in the cases of article 1723, numbers 1 to 4, if—

1. A valid criminal sentence has been rendered on account of the penal act;
2. A judicial criminal procedure could not be instituted or concluded for reasons other than absence of proof.

## ARTICLE 1725.

In all of the cases of article 1723 the reopening is permissible only if the party, without any fault of his own, could not make valid the ground for contesting in the previous proceeding, especially by the use of a remedy at law.

## ARTICLE 1726.

Together with the application for a reopening, the grounds for contesting which relate to an older decision of the same or of the lower authorities may be made valid if the contested decision is based on the older one.

2. *Competence.*

## ARTICLE 1727.

PARAGRAPH 1. The judgment office whose decision has been contested shall decide on the application.

PAR. 2. If several decisions have been contested which were issued by judgment offices of different rank, the decision shall rest with the judgment office of higher rank. The superior insurance office shall decide in the place of the Imperial Insurance Office (or the State insurance office) if a judgment has been contested which was issued in a reviewing procedure on the basis of article 1723, Nos. 1, 2, 5, or 6.

3. *Course of the procedure.*

## ARTICLE 1728.

PARAGRAPH 1. The application must be filed within one month.

PAR. 2. The time limit begins with the date on which the party learns the ground of contesting, but not before the decision becomes effective. After the expiration of five years, beginning with the date of validity, the application is no longer permissible.

PAR. 3. The provisions of paragraph 2 shall not be applicable if the application is made for a reopening on account of inadequate representation. The time limit begins then from the date on which the judgment was delivered to the party or, if he was not able to conduct the litigation himself, to his legal representative.

## ARTICLE 1729.

The reopening may also be started on the initiative of the officials.

## ARTICLE 1730.

The provision of article 129, paragraphs 2 and 3, relating to the observance of the time limit, is also correspondingly applicable to the time limits of exclusion mentioned in article 1728.

## ARTICLE 1731.

PARAGRAPH 1. If the application is belated or is not permissible, the president of the judgment office can disallow it without oral proceedings by a decree which states the reasons therefor. The president of the judgment senate may do so only if he concurs therein with the one reporting.

PAR. 2. The applicant may appeal within one week after the delivery of the decision to the competent authority. The decree must refer to this fact.

## ARTICLE 1732.

PARAGRAPH 1. If the application has been made in due time and is

permissible, the principal matter shall be tried anew in so far as the grounds for contesting relate to it.

PAR. 2. Those provisions are applicable to the new procedure which are valid for the authority to which the new procedure has been referred.

#### ARTICLE 1733.

Remedies at law shall be permissible in so far as they are stated—if they are stated—against the decisions of the authorities which have to deal with the reopening.

#### 4. *Final provisions.*

#### ARTICLE 1734.

With the approval of the Federal Council the reopening may by imperial decree be regulated in some other manner than that given in the preceding provisions.

### SECTION THREE.—SPECIAL KINDS OF PROCEDURE.

#### I. CONTROVERSIES OF SEVERAL INSURANCE CARRIERS IN REGARD TO THE OBLIGATION TO FURNISH COMPENSATION.

#### ARTICLE 1735.

If an accident insurance carrier is of the opinion that although an accident requiring compensation exists, the compensation should not be granted by it, but by another insurance carrier, then it shall grant the beneficiary a provisional relief, communicate the proceedings to the other insurance carrier, and request it to acknowledge its obligation to furnish compensation.

#### ARTICLE 1736.

PARAGRAPH 1. If the other insurance carrier declines to admit its obligation to furnish compensation or does not make a declaration within six weeks, the matter shall be referred to the Imperial Insurance Office. The latter shall decide by judicial procedure which insurance carrier is liable to compensation.

PAR. 2. Where a State insurance office exists it shall decide if the district of the insurance carriers affected does not extend beyond the territory of the federal State. But in so far as an insurance carrier is participating, for which the Imperial Insurance Office or another State insurance office is competent, then the decision shall be made by the Imperial Insurance Office.

PAR. 3. Articles 1701, 1702, 1708, paragraph 2, 1712, 1714, and 1716 to 1721 are here correspondingly applicable. The decision shall be delivered to the insurance carriers affected and to the beneficiary.

#### ARTICLE 1737.

The Imperial Insurance Office (or the State insurance office) may summon to the procedure other insurance carriers according to article 1736. They can be ordered to pay a compensation, even if the claim against them has already been disallowed with legal effect. Article 1704 is here applicable.

#### ARTICLE 1738.

If the other insurance carrier (art. 1735) acknowledges its obligation to furnish compensation, or if it has been declared liable to compensation by the Imperial Insurance Office, it shall refund all expenditures to the insurance carrier which has provided the provisional relief. Controversies over claims for reimbursement shall be decided by judgment procedure.

#### II. PROCEDURE OF DISTRIBUTION.

#### ARTICLE 1739.

If the employment in which an accident occurred was carried on for



several establishments or activities which are insured with different insurance carriers, then the insurance carriers affected may distribute the burden of compensation among themselves.

#### ARTICLE 1740.

PARAGRAPH 1. If they can not agree, the Imperial Insurance Office (judgment senate) may on application of one of them distribute the burden of compensation according to its own discretion.

PAR. 2. Where a State insurance office exists it has the right to do so, if the district of the insurance carriers affected does not extend beyond the territory of the federal State. In so far as an insurance carrier participates, for which the Imperial Insurance Office or the State insurance office is competent, the authority is vested in the Imperial Insurance Office.

PAR. 3. Articles 1701, 1702, 1712, 1714, and 1716 to 1721 are correspondingly applicable.

#### ARTICLE 1741.

An accident insurance carrier not affected by the dispute may be required to contribute a part of the contribution, even though the claim against it has already been disallowed with legal effect.

#### ARTICLE 1742.

All insurance carriers who are affected by the cost shall be called in to the procedure dealing with the amount of the compensation.

### III. DETERMINATION OF THE VALIDITY OF A CLAIM TO A WIDOW'S PENSION.

#### ARTICLE 1743.

If a widow, before she is an invalid, makes a claim on the basis of the survivor's insurance, the amount of her widow's pension shall on her application be determined and the widow shall be informed of her right to make application for payment after the invalidity occurs (decision on the validity of a claim).

### IV. CONTESTING THE FINAL DECISIONS OF THE INSURANCE CARRIER.

#### ARTICLE 1744.

PARAGRAPH 1. Against a valid decision or a final decision of an insurance carrier a new examination can be applied for or undertaken if one of the conditions mentioned in article 1723, Nos. 1 to 3, 5 or 6, are present.

PAR. 2. Articles 1724 to 1734 are here correspondingly applicable.

### SECTION FOUR.—SPECIAL PROVISIONS FOR THE NAVIGATION ACCIDENT INSURANCE.

#### I. GENERAL PROVISIONS.

#### ARTICLE 1745.

The provisions relating to the determination of the benefits are also applicable to the navigation accident insurance in so far as articles 1746 to 1770 do not prescribe otherwise.

#### II. REPORTING OF ACCIDENTS.

#### ARTICLE 1746.

PARAGRAPH 1. An accident, sustained by a person employed on a seagoing vessel during the voyage, and which has the consequence designated in article 1552, paragraph 1, shall be recorded in the journal (ship's journal, log book) and be briefly described there or in an appendix.

PAR. 2. If no journal is kept, then the master of the vessel shall make a special written report of such accident.

#### ARTICLE 1747.

PARAGRAPH 1. The master of the vessel shall deliver a copy of each entry of this kind, attested by him, to that marine office (*See*

*mannsamt*) where it may first be done. In place of it he may also submit the ship's journal or the written record to the marine office (*Seemannsamt*) for the purpose of making of a copy.

PAR. 2. The marine office (*Seemannsamt*) shall return the ship's journal or the written record within 24 hours.

#### ARTICLE 1748.

If the accident occurs in Germany before or after the voyage, the master of the vessel shall not later than the third day after he has learned of it report it to the marine office (*Seemannsamt*), or if there is none in the place, to the local police authority, as well as to the administrative body of the association specified in the constitution.

#### ARTICLE 1749.

The marine office (*Seemannsamt*) or the local police authority shall transmit the copies and reports to the marine office of the home port.

#### ARTICLE 1750.

PARAGRAPH 1. In the case of small scale establishments engaged in marine navigation, as well as of sea and coast fishing (arts. 1186 and 1187), the accident report shall be directed to the local police authority in Germany in whose district the accident has occurred or where the injured person first remains after the accident.

PAR. 2. Special records of accidents on board are not to be kept.

#### ARTICLE 1751.

The Imperial Insurance Office shall draw up the model form for the description of accidents and for the records.

#### ARTICLE 1752.

Articles 1552 to 1558 shall otherwise be applicable to the reporting of accidents.

### III. INVESTIGATION OF ACCIDENTS.

#### ARTICLE 1753.

PARAGRAPH 1. The accident shall be investigated by a marine office (*Seemannsamt*) or by the German local police authorities with corresponding application of articles 1559, 1563, paragraph 4, and 1564 to 1567.

PAR. 2. Articles 1754 to 1766 take the place of articles 1560 to 1562, and 1563, paragraphs 1 to 3.

#### ARTICLE 1754.

PARAGRAPH 1. If the accident must be investigated in a foreign country, the master of the vessel shall before that German consular office (*Konsulat*) before which it can first be done, with the assistance of two ship's officers or other trustworthy persons, make a solemn declaration of the facts, which are to be established according to article 1565.

PAR. 2. For the purpose of determining the matter, the marine office (*Seemannsamt*) may also obtain the solemn declaration of other persons and secure other proofs.

#### ARTICLE 1755.

PARAGRAPH 1. If the accident is to be investigated in Germany, the master of the vessel shall apply for it at a marine office (*Seemannsamt*), or where none exists in the place, at a German local police authority.

PAR. 2. The authority invoked shall conduct the investigation.

#### ARTICLE 1756.

Accidents in German establishments conducting floating docks and other establishments designated in article 1046, No. 3, shall be investigated by the local police authority to which the accident was reported.

## ARTICLE 1757.

On application of the parties affected the higher administrative authority may transfer the investigation to another marine office (*Seemannsamt*) or to other local police authorities.

## ARTICLE 1758.

In the establishments administered by the Empire or a federal State, the investigation shall be conducted by the service authorities to which they are subordinated. It may be transferred to other authorities.

## ARTICLE 1759.

Article 42 of the Navigation Code is correspondingly applicable to the obligation of the ship's crew to co-operate in the case of declarations or proceedings for the purpose of the investigation of accidents.

## ARTICLE 1760.

PARAGRAPH 1. Articles 1562 and 1563, paragraphs 1 to 3, are as far as practicable applicable to the calling in of the parties affected to the investigation.

PAR. 2. Experts shall be called in on application of the undertaker of an establishment and of the master of the vessel; the costs shall be paid by the insurance carrier.

## ARTICLE 1761.

PARAGRAPH 1. A special declaration (*Verklärung*) (art. 552 of the Commercial Code), in compliance with the requirements of articles 1565 and 1760, shall take the place of the solemn declaration and of the investigation of the accident.

PAR. 2. The exemption from fees and stamp taxes (art. 137) is also applicable to the special declaration (*Verklärung*) (par. 1), which is made before German authorities, and to the investigation of the accident at the marine office (*Seemannsamt*).

## ARTICLE 1762.

The authority shall transmit to the directorate of the accident association a certified copy of the investigation proceedings or of the special declaration.

## ARTICLE 1763.

For the accidents having the consequences specified in article 1559, paragraph 1, the provisions of the law relating to the investigation of marine accidents are applicable as to the obligation—

1. Of the courts, port authorities, coast authorities, marine offices (*Seemannsämtter*) officials in charge of the ship registers, to report without delay marine accidents which have come to their knowledge (art. 14, *ibid.*);
2. Of the German marine offices in foreign countries to undertake the investigations which can not be deferred and the collection of evidence in marine accidents which have come to their knowledge (art. 15, *ibid.*).

## ARTICLE 1764.

PARAGRAPH 1. The accident reports (art. 1763) shall be forwarded to the directorate of the association.

PAR. 2. In addition, the obligation to report marine accidents to a marine office (*Seemannsamt*) continues to exist.

## ARTICLE 1765.

If, within six months after the cognizance of the accident, the marine office (*Seemannsamt*) of the home port has not received any news relating to the investigation, it shall itself institute the investigation.

## ARTICLE 1766.

PARAGRAPH 1. In the case of small scale establishments engaged

in marine navigation, as well as of the sea and coast fishing establishments (arts. 1186 and 1187), the local police authorities to which the accident has been reported shall investigate it.

PAR. 2. On application of the parties affected, the higher administrative authorities may transfer the investigation to other police authorities.

#### IV. PENAL PROVISIONS.

##### ARTICLE 1767.

PARAGRAPH 1. The directorate of the association may impose fines of not more than 300 marks [\$71.40] upon any person who violates the provisions relating to—

The entry in the journal (ship's journal) or other record of the accident;

The communication of the entry;

The making of solemn declarations;

The inauguration of the investigation.

PAR. 2. The ship owner is liable, according to article 1183, for the fines imposed on him or on the master of the vessel.

PAR. 3. On appeal the superior insurance office decides finally.

#### V. COMPETENCE OF THE ADMINISTRATIVE BODIES FOR DETERMINATIONS.

##### ARTICLE 1768.

If, according to article 1568, the directorate of the section must determine the accident compensation, then that section in the district of which the home port of the vessel is situated, or the establishment has its seat, is competent.

##### ARTICLE 1769.

In all of the cases mentioned in article 1568 the constitution of the navigation accident association may transfer the determination as follows:

To another administrative body of the association;

To a committee of the directorate of the association or of the section;

To special commissions;

To local representatives (district agents).

#### VI. CONTROVERSIES.

##### ARTICLE 1770.

PARAGRAPH 1. Articles 1108 and 1109 shall be applicable to controversies relating to claims of seamen arising out of the provisions of articles 1083 to 1086, 1092, 1104, and 1106.

PAR. 2. The same is applicable to claims of seamen which, according to article 1094, have been transferred to the insurance carrier.

### B. OTHER JUDGMENT MATTERS.

#### I. GENERAL PROVISIONS.

##### ARTICLE 1771.

For controversies which must be settled not by determination procedure, but according to the specific provisions of this law by judgment procedure, articles 1636 to 1734 are correspondingly applicable in so far as articles 1772 to 1779 do not prescribe otherwise.

#### II. COMPETENCE.

##### ARTICLE 1772.

The local insurance office (judgment committee) decides disputes of the kind designated in article 1771.

## ARTICLE 1773.

The local insurance office which must decide the dispute over the principal claim is also competent for all claims relating to reimbursement, refunding, and other claims arising out of the principal claim.

## ARTICLE 1774.

PARAGRAPH 1. If the principal claim shall not be decided by a local insurance office, or if the claim for reimbursement has originated out of the obligation of a commune, a poor law union, an undertaker of an establishment, or a fund for the relief of indigent persons (arts. 1531, 1541), then that local insurance office is competent in whose district the insured person resides or is employed.

PAR. 2. If the insured person has no place of residence or employment in Germany, or if he has died or is not accounted for, then article 1638 shall be applicable.

## ARTICLE 1775.

A dispute between a sick fund which is subordinated to a local insurance office on the one hand and a miners' sick fund or substitute fund on the other shall be decided by the local insurance office.

## III. OTHER PROVISIONS.

## ARTICLE 1776.

Only the remedy at law, but not the application for oral proceedings, is permissible against preliminary decisions.

## ARTICLE 1777.

Only the review shall be permissible against judgments of the judgment chambers.

## ARTICLE 1778.

PARAGRAPH 1. The review is not permissible in the case of reimbursement and refunding claims if the matter to be settled deals with temporary benefits.

PAR. 2. It is, however, permissible for reimbursement and refunding claims which are regulated in book 5 of this law.

## ARTICLE 1779.

The appeal and the review effect a stay if the matter to be settled deals with claims for reimbursement.

## C. DECISION PROCEDURE.

## SECTION ONE.—GENERAL PROVISIONS.

## ARTICLE 1780.

The decisions of the insurance authorities are arrived at by decision procedure, in so far as this law does not prescribe the judgment procedure.

## ARTICLE 1781.

PARAGRAPH 1. The law determines which decision matters shall be determined by the decision committee, decision chamber, or decision senate. Decision matters which, according to the law, shall be decided by the decision committee shall, in so far as appeal to decision procedure is permissible, be decided by the decision chamber and decision senate. This shall be correspondingly applicable to decision matters which, according to the law, shall be decided by the decision chamber as authority of first instance.

PAR. 2. The president of the decision chamber may also refer to it other decision matters if the matters to be settled deal with questions of fundamental importance; he must do so, if in case of differences of opinion a member, who participated in the preparation of

the matter, makes application therefor. This shall be correspondingly applicable to the decision senate.

PAR. 3. Members of the Imperial Insurance Office (or the State insurance office), who are charged with the preparation of the matter, may be called into the decisions of the decision senate according to the detailed specifications of the decrees relating to the procedure (art. 35, par. 2, and art. 109, par. 1).

PAR. 4. In other respects these decrees shall specify who shall settle decision matters.

#### ARTICLE 1782.

The employers and insured persons elected from the corresponding field of the accident insurance shall be called into the proceedings of the decision senates in matters of the accident insurance.

#### ARTICLE 1783.

PARAGRAPH 1. In matters of the sickness insurance, the local insurance office or the superior insurance office, in the district of which the fund affected has its seat, is locally competent as the authority of first instance of the decision procedure, in so far as this law does not provide otherwise.

PAR. 2. If several funds are affected, which have their seat in the district of several local insurance offices, then the local insurance office of that fund to which the insured person belongs is competent. If he does not belong to any of them, or the matter to be settled deals with a dispute according to article 258, then the superior insurance office shall decide which local insurance office is competent. If the funds have their seats in the districts of different superior insurance offices, then the highest administrative authority shall determine the competent local insurance office or superior insurance office.

#### ARTICLE 1784.

In matters of the accident insurance the local insurance office or superior insurance office in whose district is located the seat of the establishment or where the insured activity is exercised, is locally competent as the authority of first instance of the decision procedure, in so far as this law does not provide otherwise.

#### ARTICLE 1785.

PARAGRAPH 1. In matters of the invalidity and survivors' insurance, the local insurance office or the superior insurance office in the district of which the employment which gives occasion for the decision took place, and in the case of voluntary insurance the local insurance office or the superior insurance office in whose district the insured person resides is locally competent as the authority of first instance of the decision procedure, in so far as this law does not provide otherwise.

PAR. 2. For claims of the survivors the local insurance office or superior insurance office is also competent, in whose district the survivors reside.

#### ARTICLE 1786.

PARAGRAPH 1. If an office believes itself not to be competent, but that another office is the competent one, then it shall transfer the matter to the latter.

PAR. 2. If this office also does not believe itself to be competent, then article 1640, paragraphs 2 and 3, shall be applicable.

#### ARTICLE 1787.

In the case of a dispute between a sick fund and a miners' sick fund or a substitute fund, article 1775 shall be applicable.

#### ARTICLE 1788.

In so far as the highest administrative authorities have transferred

decision rights to the administrative bodies specified in article 112, the decisions of these administrative bodies, as far as the legal remedies in the decision procedure are concerned, are equivalent to the decisions of the local insurance office.

#### ARTICLE 1789.

The same provisions as for the judgment procedure shall also be applicable to the disqualification and nonacceptance of persons, the elucidation of the state of affairs, as well as the securing of evidence.

#### ARTICLE 1790.

PARAGRAPH 1. The proceedings of the decision procedure are not public. With reservation of article 78, paragraph 3, article 1667 shall be correspondingly applicable to the voting of decision authorities for the decision chamber.

PAR. 2. The decision shall be delivered to the parties affected.

### SECTION TWO.—APPEALS.

#### ARTICLE 1791.

An appeal against the decisions of the insurance carriers is permissible in so far as this law does not provide otherwise. The appeal shall be directed—

In matters of the sickness, and invalidity and survivors' insurance, to the local insurance office;

In matters of the accident insurance, to the superior insurance office.

#### ARTICLE 1792.

Against the decisions of the local insurance office as the authority of first instance the appeal to the superior insurance office is permissible, in so far as this law does not provide otherwise.

#### ARTICLE 1793.

Against the decisions of the superior insurance office as the authority of first instance the appeal to the Imperial Insurance Office (or the State insurance office, art. 1800) is permissible, in so far as this law does not provide otherwise.

#### ARTICLE 1794.

The authority which has to decide on the appeal may postpone the execution of the decision.

#### ARTICLE 1795.

If the appeal is permissible and has been filed in due time the parties affected shall be given a hearing.

#### ARTICLE 1796.

If the appeal is well founded, the authorities competent for the decision may either decide in the matter themselves or refer it back to an authority of lower instance or to the insurance carrier whose decision has been contested. Article 1715, paragraph 2, shall in such case be correspondingly applicable.

### SECTION THREE.—FURTHER APPEALS.

#### ARTICLE 1797.

PARAGRAPH 1. In so far as this law does not provide otherwise, there is permissible against the decision issued on appeal by—

The local insurance office, the further appeal to the superior insurance office;

The superior insurance office, the further appeal to the Imperial Insurance Office (or the State insurance office).

PAR. 2. The same provisions shall be applicable to the procedure as to the appeal.

## 1500 WORKMEN'S COMPENSATION AND INSURANCE.

### ARTICLE 1798.

The decisions issued on further appeal by the superior insurance office are final.

### ARTICLE 1799.

If the superior insurance office desires to dissent in a case, in which it must decide finally, from an officially published and fundamental decision of the Imperial Insurance Office (or the State insurance office), or the matter to be settled in such a case deals with an interpretation of legal provisions of fundamental importance which have not yet been determined, then article 1693 shall regulate the procedure.

### ARTICLE 1800.

PARAGRAPH 1. Where a State insurance office exists, it shall decide on decision matters, if the district of the insurance carrier affected does not extend beyond the territory of the federal State. Otherwise the decision shall be made by the Imperial Insurance Office.

PAR. 2. In so far as an insurance carrier is affected, for which according to paragraph 1 the Imperial Insurance Office or another State insurance office is competent, the decision shall be made by the Imperial Insurance Office.

### ARTICLE 1801.

The provision of article 1716 relating to the publication of fundamental decisions shall also be applicable to decision matters.

## D. COSTS AND FEES.

### I. COSTS OF THE PROCEDURE.

#### ARTICLE 1802.

If a party affected has willfully or through obstructive measures or deception caused expenditures in the procedure, the insurance authority can charge the same to him, either wholly or partly.

#### ARTICLE 1803.

PARAGRAPH 1. In judgment matters of the sickness insurance the superior insurance office shall impose a fee upon the defeated party. It shall be fixed in proportion to the value of the thing in dispute, but shall not exceed 20 marks [\$4.76] and shall be determined in the decision.

PAR. 2. The imperial decree relating to the procedure (art. 35, par. 2) shall determine the particulars hereto.

PAR. 3. The highest administrative authority shall regulate the collection of the fee.

### II. FEES OF LAWYERS.

#### ARTICLE 1804.

PARAGRAPH 1. The compensation for the professional services of lawyers in the procedure before insurance authorities shall be determined according to a schedule of fees.

PAR. 2. The schedule of fees shall be issued by imperial decree with the approval of the Federal Council and for the procedure before the State insurance office by the State government.

#### ARTICLE 1805.

An agreement as to higher amounts than those provided by the schedule of fees is void.



# GENERAL INDEX

---

*[References are to Sections.]*

## ABANDONMENT,

See SEPARATION.

effect on right of spouse to compensation, 124.

## ABATEMENT,

action by death under Rhode Island act, 367.

nominal award to keep proceedings alive, 566.

## ABROGATION OF DEFENSES,

See COMMON LAW.

California, 263.

Illinois, 326.

Kansas, 292.

Massachusetts, 303.

Michigan, 355.

Nevada, 290.

New Jersey, 255.

Ohio, 171.

Rhode Island, 367.

Wisconsin, 227.

provisions common to all statutes, 401.

## ABSTRACT,

judgment on review of California award, 263.

## ACCELERATION

existing disease, 463.

## ACCEPTANCE,

See WITHDRAWAL.

implied acceptance of Michigan act, 355.

non-acceptance of Illinois act by employé, 332.

notice by employer, 270.

notice of accident by Massachusetts employer, 308.

provisions of California act, 268.

Illinois act, 329-331.

Kansas act, 292.

Michigan act, 357.

New Hampshire act, 296.

[References are to Sections.]

**ACCEPTANCE—Continued.**

New Jersey act, 255.

Rhode Island act, 367, 370.

Washington act, 137.

Wisconsin act, 238.

withdrawal under California act, 269.

written acceptance of Michigan employer, 359.

**ACCIDENT ASSOCIATIONS,**

organization under German code 1911, 601.

**"ACCIDENT ARISING OUT OF AND IN THE SCOPE OF EMPLOYMENT."**

See SCOPE OF EMPLOYMENT.

meaning of term, 472.

**ACCIDENT FUND,**

creation in Washington act, 124.

**ACCIDENT INSURANCE,**

administration under German code 1911, 598, 601.

carriers under German code 1911, 601.

constitution under German code, 1911, 601.

Montana act, 64.

procedure under German code, 1911, 601.

relation to invalidity and survivors insurance under German code, 1911, 601.

relation to sick insurance under German code, 1911, 601.

supervision under German code, 1911, 601.

under German laws prior to 1911, 582.

**ACCIDENTS,**

See INJURIES.

acceleration of existing disease, 463.

agricultural insurance under German code, 1911, 601.

apportionment of compensation between different employers liable, 461.

authority of Washington board to regulate proof, 124.

building trades accident insurance laws in Germany, 590.

burden of proof of injury therefrom, 559.

causes in Germany, 46.

classification of causes, 47.

death from anaesthetic in operation, 450.

defective medical treatment, 464.

definition under British act, 446, 573.

under Federal act, 397.

duty of employer to report under Massachusetts act, 303.

effect of refusal to undergo surgical operation, 448.

[References are to Sections.]

**ACCIDENTS—Continued.**

- experience under Ohio act, 178.
- first report under California act, 271.
  - under Michigan act, 364.
  - under Wisconsin act, 241.
- first report of casualty company under California act, 286.
- first supplemental report under California act, 272.
- German agricultural accident insurance laws, 589.
- German marine insurance laws prior to 1911, 591.
- gradual paralysis, 459.
- heart diseases, 457.
- inference that injury is the result of accident, 447.
- injury from inhalation of gas, 455.
  - heat, cold and lightning, 449.
  - violence at hands of third person, 462.
- injury to sight, 456.
- intoxication, 468.
- injuries while undergoing epileptic fit, 460.
- investigation under German code, 1911, 601.
- meaning of term in insurance acts, 446.
  - "industrial accident" in German code, 1911, 598.
- negligence not always involved, 446.
- notice under British act, 576, 577.
  - Arizona act, 375a.
  - Illinois act, 326, 335.
  - Maryland act, 376a.
  - Michigan act, 355.
  - Nevada act, 290.
  - New Hampshire act, 296.
  - New York act, 56.
  - Washington act, 124.
  - Wisconsin statute, 227.
- occupational diseases, 461.
- physician's report under California act, 281.
- prevention, 36.
  - under laws, 587, 601.
- question of fact under British act, 573.
- record under Federal act, 381.
- reports under Federal act, 378.
  - California act, 264.
  - German code, 1911, 601.
  - Illinois act, 326, 337, 339.
  - Kansas act, 292.
  - Massachusetts act, 308.
  - Michigan act, 355.
  - New Hampshire act, 300-301.

[References are to Sections.]

**ACCIDENTS**—*Continued.*

- New Jersey act, 257, 258, 261.
- various American acts, 409, 411.
- Washington act, 143.
- report of casualty company under Wisconsin act, 249.
- request for fuller report under California act, 283.
- social and economic results, 44.
- strains and ruptures, 458.
- suicide while insane, 471.
- supplemental reports under Illinois act, 338, 340.
  - under Michigan act, 365.
- whether apoplexy an accident, 454.
- whether injury must be proximate cause of accident, 466.
- whether nervous shocks accident, 451.
- wilful misconduct in misrepresentation of age, 469.

**ACCOUNTANTS,**

- authority of Ohio board to employ, 171.

**ACCOUNTS,**

- power of Ohio board to require production, 171.

**ACTIONS,**

- See ELECTION OF REMEDIES; EVIDENCE; HEARINGS; JUDGMENT; JURISDICTION; LIMITATION OF ACTIONS.
- compensation under New Hampshire act, 296.
  - under Arizona act, 375a.
  - under New Jersey act, 255.
  - under Rhode Island act, 367.
- independent, allowed under British act, 575.
- preservation of existing under New Jersey act, 255.
- rights not affected by New York acts, 56.
- right of employé to sue under Ohio act, 171.
- to set aside release of liability under Kansas act, 292.
- when action accrues under Kansas act, 292.

**ACTUARY,**

- authority of Ohio board to employ, 171.

**ADJOURNMENT,**

See CONTINUANCE.

- hearing under California act, 263.
- under Wisconsin statute, 227.

**ADJUSTMENT,**

- application under California act, 277.
  - Wisconsin act, 248.
- notice of hearing of application under California act, 278.

*[References are to Sections.]*

## ADMINISTRATION,

- agricultural accident insurance under German code, 1911, 601.
- appropriation to put California act into effect, 263.
  - Massachusetts act, 305.
  - Michigan act, 355.
  - Ohio act, 171.
  - Washington act, 124.
  - Wisconsin act, 227.
- Commission in New Jersey, 257.
- compensation acts, generally, 96.
- departments created for administration of Ohio act, 171.
  - Washington act, 124.
- entire cost borne by State of Ohio, 171.
- expenses under British act, 577.
  - German laws, 593.
- German code of 1911, 596, 601.
- German laws, prior to 1911, 581, 585.
- Illinois act, 327.
- interpretation of Ohio act by Board and Attorney-General, 171.
- letters on estate of employer, 551.
- Michigan act, 355.
- Montana act, 64.
- navigation accident insurance under German code, 1911, 601.
- New Hampshire act, 297.
- old age and invalid insurance under German law, 593.
- provisions for expense in various American acts, 431.
- resources of sickness insurance fund under German code, 1911, 601.
- Rhode Island act, 368.
- right of State to undertake, 74.
- sick insurance under German code, 1911, 601.
- use of postal department in Germany, 601.
- various schemes under American statutes, 402.
- whether administration executive or judicial, 97.
- Washington act, 124.
- Wisconsin act, 227.

## ADMINISTRATORS,

- necessity of appointment of administrator of dependent, 509.
- petition for appointment under Illinois act, 346.
- petition for lump sum payment under Illinois act, 344.
- right of representative of deceased dependent, 508.

## ADMISSION,

- service of claim for injury, 252, 553.

*[References are to Sections.]*

**ADOPTED CHILDREN,**

dependents under Rhode Island act, 367.

**AFFIDAVIT,**

See **FORMS**.

claims under Federal act, 378, 394.

under Washington act, 153.

dependent parents under Federal act, 394.

parents under Federal act, 394.

use in hearing under Ohio act, 174.

**AFFIRMANCE,**

award under California act, 263.

**AGENTS,**

duty to report under Montana act, 64.

effect of unauthorized employment of servant, 443.

**AGGRAVATION,**

disability under Washington act, 124.

**AGREEMENT,**

See **CONTRACT**.

between employer and employe under Arizona act, 375a.

cancellation under Kansas act, 292.

effect as estoppel, 546.

effect of waiver under Massachusetts act, 303.

Michigan act, 355.

enforcement under Massachusetts act, 303.

filing under Kansas act, 292.

final adjustment under Rhode Island act, 374.

forms under Kansas act, 292.

in regard to compensation under Massachusetts act, 317.

judgment upon under Kansas act, 292.

petition for review of agreement under Illinois act, 353.

redemption of liability by lump sum payment under Massachusetts act, 312.

review or modification under Kansas act, 292.

stay of proceedings upon under Kansas act, 292.

stipulation under California act, 265.

to pay compensation in lieu of arbitration, 548.

where payments continued under Rhode Island act, 374a.

**AGRICULTURAL ACCIDENT INSURANCE,**

under German code, 1911, 601.

**AGRICULTURAL LABORERS,**

accident insurance under German laws prior to 1911, 589.

extension of sick insurance under German laws, 581.

[References are to Sections.]

**AGRICULTURAL LABORERS—Continued.**

- insurance in Germany, 47.
- under British compensation acts, 436.
  - California act, 264.
  - Rhode Island act, 367.

**AGRICULTURAL LAWS,**

- Germany, 582.

**AGRICULTURE,**

- defined in German code 1911, 601.

**ALIENS,**

- included in California act, 263.
- covered by Michigan act, 355.
  - Wisconsin act, 227.
- dependents, 500.

**ALTERNATIVE SCHEMES,**

- See ELECTION OF REMEDIES.
- compensation under various American acts, 367, 423.

**AMENDMENT,**

- SEE MODIFICATION.
- notice under British act, 577.
- on appeal under Rhode Island act, 367.
- pleadings under British act, 555.
  - under California act, 265.
  - under Wisconsin act, 235.
- proposed amendment to Washington act, 126.
- rules of employés' insurance association, 303.

**AMPUTATION,**

- effect of on amount of compensation, 255.

**ANAESTHETIC,**

- whether death from administration accidental, 450.

**ANALOGOUS DECISIONS,**

- application to compensation acts, 77-82.

**ANALYSIS,**

- German code 1911, 600.

**ANEURISM,**

- whether an accident, 457.

**ANKYLOSTOMIASIS,**

- occupational disease under British act, 577.

[*References are to Sections.*]

ANNUAL EARNINGS,

SEE AVERAGE ANNUAL EARNINGS.

ANNUITIES,

purchase under British act, 577.

Michigan act, 350.

Washington act, 124.

Wisconsin act, 227.

under German law prior to 1911, 593.

ANSWER,

under California act, 265.

Wisconsin act, 244.

ANTHRAX,

compensation under British act, 573.

occupational disease under British act, 577.

whether disease an accident, 453.

APOPLEXY,

whether an accident, 454.

APPEALS,

See REVIEW; SETTLEMENT.

bond for appeal from arbitrator's award under Illinois act, 350.

conclusiveness of orders and decrees, 570.

effect to suspend decree under Rhode Island act, 367.

employer bound by application for review, 568.

from award of arbitrator in Illinois, 326, 349.

from orders of Superior Court under California act, 263.

medical witnesses on appeal under Washington act, 124.

petition for review of agreement under Illinois act, 353.

question not considered below may not be reviewed on appeal,  
570.

reopening of proceedings under German code, 601.

time for taking under Ohio act, 171.

under British act, 571.

California act, 263, 265.

Illinois act, 349.

Massachusetts act, 303.

Michigan act, 355.

New Hampshire act, 296.

under German laws, 585.

Ohio act, 171.

Rhode Island act, 367.

various American acts, 425.

Washington act, 124.

Wisconsin act, 227.



*[References are to Sections.]*

**APPLICATION,**

- adjustment of claim under Wisconsin act, 248.
- appeal under California act, 265.
- binding force of application for review, 568.
- burden of proof on application to reduce compensation, 558.
- duty of clerk to record under Ohio act, 174.
- duty of Ohio board to prepare and furnish forms, 171.
- for classification and premium under Ohio act, 177.
- money to pay for medical, nurse, and hospital services under Ohio act, 186, 192, 199, 216.
- notice of hearing under California act, 278.
- review of claim under Massachusetts act, 321.
- under California act, 265.
- used by employer under Ohio act, 176.

**APPOINTMENT,**

- petition for appointment of third arbitrator under Illinois act, 347.

**APPORTIONMENT,**

- among dependents under Rhode Island act, 367.
- benefits under Ohio act on death of employé, 171.
- between different employers, 461.
- procedure for apportionment among dependents, 565.

**APPRENTICES,**

- beneficiaries under British act, 577.
- sickness insurance under German code 1911, 601.

**APPROPRIATION,**

See ADMINISTRATION.

- expenses of administration under various American Acts, 431.

**APPROVAL,**

- claims under Federal act, 381.
- attorney's fees under Illinois act, 326.
  - Massachusetts act, 303.
  - New Hampshire act, 296.
- insurance scheme under Kansas act, 292.

**ARBITRATION,**

- agreement to pay compensation to avoid arbitration, 548.
- appeal on failure in arbitration under Nevada act, 290.
- arbitrator without power to grant new trial, 567.
- as method of settlement of dependency of British act, 577.
- assessment of costs under Massachusetts act, 322.
- bond for appeal from award under Illinois act, 350.
- conclusiveness of awards under Michigan act, 355.
- costs under British act, 511.

[References are to Sections.]

**ARBITRATION**—*Continued.*

- duties of arbitrator under Kansas act, 292.
- effect of death or refusal of arbitrator to act, under British act, 577.
- fees of arbitrator under Kansas act, 292.
  - Massachusetts act, 303.
- finding conclusive in absence of appeal under Massachusetts act, 303.
- hearing under Massachusetts act, 303.
- jurisdiction of Kansas courts to enforce awards, 292.
- jury trial on appeal under Illinois act, 351.
- membership of committee under Massachusetts act, 303.
- methods under British act, 577.
- necessity of dispute to give arbitrator jurisdiction, 547.
- petition for appeal from award under Illinois act, 349.
- petition for appointment of third arbitrator under Illinois act, 347.
- remuneration under British act, 577.
- report of committee under Massachusetts act, 320.
- report under Illinois act, 348.
- report filed with state bureau in Illinois, 326.
- settlement of disputes under Austrian schedule, 101.
  - British act, 109, 577.
  - British Columbia schedule, 103.
  - German schedule, 108.
  - German laws prior to 1911, 585.
  - Hungarian schedule, 111.
  - Illinois act, 326.
  - Massachusetts act, 303.
  - Michigan act, 355.
  - Nevada act, 290.
  - New York act, 56.
  - New Zealand schedule, 115.
  - South Australian schedule, 119.
  - Swedish schedule, 120.
- strictness of pleading not demanded under British act, 555.

**ARIZONA.**

- act remedial, 375a.
- enactment of compensation law, 5.
- scope and nature of act, 375.
- text of act, 375a.

**ARMS,**

- compensation for loss under Michigan act, 355.
  - under New Jersey act, 255.
- loss, permanent incapacity, 517.

*[References are to Sections.]***ARSENALS,**

employés protected by federal act, 378.

**ASPHALT WORK,**

classification under Washington act, 124.

**ASSAULT,**

exclusion of injury result of assault while playing prank, 476.

**ASSESSMENTS,**

See **INSURANCE.**

accident insurance under German code 1911, 601.

costs under Massachusetts act, 322.

employés' insurance associations, 303.

methods of collection under German code 1911, 598.

notice under Washington act, 124.

under Michigan act, 355.

under Ohio act, 171.

**ASSETS,**

administration insurance assets under German code 1911, 601.

**ASSIGNMENT,**

claims under California act, 263.

Kansas act, 292.

Massachusetts act, 303.

Michigan act, 355.

Nevada act, 290.

New Jersey act, 255.

Ohio act, 171.

Rhode Island act, 367.

Washington act, 164, 165.

Wisconsin act, 227.

claims under various American acts, 427.

**ASSISTANTS,**

employment under Ohio act, 171.

Washington act, 124.

**ASSOCIATION,**

SEE **EMPLOYES' INSURANCE ASSOCIATION.**

defined in Massachusetts act, 303.

**ASSUMPTION OF RISKS,**

abrogation of defense in California, 263.

Illinois act, 326.

Kansas act, 292.

Massachusetts act, 303.

Michigan act, 355.

Nevada act, 290.

[References are to Sections.]

**ASSUMPTION OF RISKS—Continued.**

New Hampshire act, 296.

New Jersey act, 255.

Ohio act, 171.

Rhode Island act, 367.

Wisconsin act, 227.

abrogation of defense under various American statutes, 401.

Common law rule, 1.

right of state to abrogate defense, 71, 307.

**ATTACHMENT,**

claim not subject in Illinois, 326.

Arizona, 375a.

Kansas, 292.

Maryland, 376a.

Massachusetts, 303.

Michigan, 355.

New Jersey, 255.

Ohio, 171.

**ATTORNEY GENERAL,**

authority in case of disputes under Arizona act, 375a.

construction of Federal act, 396-399.

Ohio act, 171.

**ATTORNEYS,**

contingent fees must be approved in Rhode Island, 367.

demand for medical examination in office, 557.

fees under German code 1911, 601.

fees under Michigan act, 355.

fees under old system in Ohio, 43.

fees subject to approval by board under Massachusetts act, 303.

liens under Kansas act, 292.

New York act, 56.

provision for fees in various American acts, 430.

right of parties to representation under Wisconsin act, 227.

right to appear at hearing before California board, 263.

right to fees under New Hampshire act, 296.

under Ohio act, 171.

under Arizona act, 375a.

services in securing compensation under Illinois act, 326.

**AUDITOR,**

duties in administration of Montana act, 64.

**AUSTRIA,**

compensation schedule, 101.

*[References are to Sections.]*

**AUTOMATIC OPERATION,**

- Illinois act, 327.
- Nevada act, 290.
- New Hampshire act, 297.
- New Jersey act, 254.
- Rhode Island act, 368.

**AVERAGE EARNINGS,**

- rules for computation under Kansas act, 292.

**AVERAGE ANNUAL EARNINGS,**

- method of computation under California act, 263.
  - Illinois act, 326.
  - Wisconsin act, 227.
- under German laws prior to 1911, 583.

**AVERAGE WEEKLY EARNINGS,**

- consideration of earnings of others in same employment, 530.
- computation under British act, 577.
  - California act, 263.
  - Massachusetts act, 303.
  - Ohio act, 171.
  - Rhode Island act, 367.
- deduction of sums paid helper, 529.
- defined in Massachusetts act, 303.
- effect of break in employment, 526.
- grade of employment in which injury received, 526.
- how computed, 525-530.
- inclusion of allowances and gratuities, 528.

**AWARDS,**

SEE COMPENSATION, JUDGMENTS.

- arbitration, under Illinois act, 348.
- cancellation under Kansas act, 292.
- certified copies under the Wisconsin act, 227.
- commutation under various American acts, 420.
- conclusive under California act, 263.
- duty of California board to make and file, 263.
- effect of fraud, 227.
- entry by Wisconsin commission, 253.
- filing under California act, 263.
  - Kansas act, 292.
- form under California act, 265.
  - Kansas act, 292.
- modification under New Jersey act, 255.
  - Ohio act, 174.
- nominal award to keep proceedings alive, 566.
- payment under Ohio act, 174.

[*References are to Sections.*]

**AWARDS—Continued.**

- petition for review under Illinois act, 353.
- preferences under California act, 263.
- review or modification under Kansas act, 292.
- revision on change of circumstances, 569.
- right to make award terminate at fixed date, 565.
- schedule under Washington act, 124.
- stay of proceedings under Kansas act, 292.
- under Washington act, 157.
- Wisconsin commission, 227.

**B**

**BADEN,**

- excepted from operation of German code 1911, 596.

**BALL PLAYERS,**

- whether covered by laws, 438.

**BANK DEPOSITOR'S GUARANTEE CASES,**

- analogy to compensation acts, 78.

**BANKRUPTCY,**

- effect of bankruptcy of employer under British act, 577.

**BARNES,**

- concurring opinion sustaining Wisconsin act, 228.

**BATH ESTABLISHMENTS,**

- covered by German code 1911, 598.

**BAVARIA,**

- excepted from operation of code 1911, 596.

**BELGIUM,**

- compensation schedule, 102.

**BENEFICIARY,**

SEE EMPLOYES, DEPENDENTS.

- defined in Washington act, 124.

**BENEFITS,**

See COMPENSATION.

- death benefits under Wisconsin act, 227.
- deduction under Illinois act, 326.
- determination under German code 1911, 601.
- necessity of benefit as condition to right to tax, 89.
- necessity of return to tax payer, 90.
- right to consider benefit fund in making compensation under Michigan act, 355.
- under German code 1911, 599, 601.

[*References are to Sections.*]

**BISMARCK,**

- early advocate of insurance method, 8.
- explanation of first draft of accident bill, 15.
- incorporation of ideas in German code 1911, 595.

**BLANKS,**

SEE FORMS.

**BLAST FURNACES,**

- classification under Washington act, 124.
- factories under Kansas act, 292.
- hazardous employment under Washington act, 124.

**BLASTING POWDER,**

- employment covered by New Hampshire act, 296.
- covered by Arizona act, 376.

**BLASTING WORKS,**

SEE EXPLOSIVES.

**BLINDNESS,**

SEE LOSS OF SIGHT.

- compensation for loss of sight under Michigan act, 355.
- total disability under Illinois act, 326.

**BOARDS,**

- creation by Wisconsin statute, 227.
- membership and duties under Massachusetts act, 303.
- Michigan industrial accident board, 355.
- oath by commission under Wisconsin statute, 227.
- organization of Wisconsin commission, 227.
- term of office of Massachusetts board, 303.
- term of office of Michigan industrial accident board, 355.

**BOARD OF AWARDS,**

- construction of Ohio statute, 171.
- creation by Ohio act, 171.
- duty in Ohio to classify employers, 171.
- duty in Ohio to prepare and furnish forms, 171.
- jurisdiction of Ohio board, 171.
- membership of Ohio, 171.
- power of Ohio board to employ subordinates, 171.
- quorum of Ohio board, 171.
- salary of members of Ohio, 171.
- sessions of Ohio board, 171, 174.
- vacancies in membership, 171.

**BOND,**

- appeal under Illinois act, 326, 350.
- duty of New Hampshire employer to file, 296.
- state treasurer as custodian of insurance fund, 171.

[References are to Sections.]

**BOOKS,**

- examination by Massachusetts board, 303.
- Michigan board, 355.
- Washington board, 124.
- power of Ohio board to require production, 171.
- power to compel production under Massachusetts act, 303.
- use in proceedings before Michigan board, 355.

**BORGNIS v. FALK COMPANY,**

- decision upholding Wisconsin act, 228.

**BREWERIES,**

- classification under Washington act, 124.
- covered by German code 1911, 598.
- hazardous employment under Washington act, 124.

**BRICKYARDS,**

- factories under Kansas act, 292.

**BRIDGES,**

- classification under Washington act, 124.
- under Arizona act, 376.
- employment in erection or destruction covered by Nevada act, 290.
- included in engineering work in Kansas act, 292.
- workers covered by New York act, 56.

**BRITISH COLUMBIA,**

- schedule of compensation, 103.

**BRITISH COMPENSATION ACT,**

See GREAT BRITAIN.

- actions independent of act, 575.
- construction, 573.
- investment of sums paid on death claims, 574.
- Lloyd-George insurance act, 578.
- nature and scope, 572.
- notice of accident, 576.
- procedure, 546-571.
- schedule of compensation, 109.
- text of act of 1906.

**BROTHERS,**

- dependents under Kansas act, 292.
- Nevada act, 290.
- Michigan act, 355.

**BUILDERS' SICK CLUBS,**

- under German law prior to 1911, 581.



*[References are to Sections.]***BUILDING CONSTRUCTION,**

- See CONTRACTORS, INDEPENDENT CONTRACTORS, SUB-  
CONTRACTORS.
- covered by Illinois act, 326.
- Washington act, 124.
- defined in Kansas act, 292.

**BUILDING,**

- right to employ sub-contractor under Kansas act, 292.

**BUILDING LAWS,**

- Germany, 582.

**BUILDING TRADES,**

- German accident insurance laws, 590.

**BULLETIN,**

- official safety bulletin under Washington act, 166.

**BURDEN OF PROOF,**

- injury result of accident, 559.
- lack of prejudice under British act, 553.
- on application to reduce compensation, 558.
- that surgical operation would have been effectual, 448.
- that injury is result of accident, 447.
- that accident arose out of and in course of employment, 495.
- that injury was result of an accident, 454.
- that refusal to undergo operation was unreasonable, 448.
- wilful negligence under New Jersey act, 255.

**BUREAU OF LABOR,**

- representative at Chicago conference, 9.
- statistics under Illinois act, 325-353.

**BURIAL EXPENSES,**

SEE FUNERAL EXPENSES.

**CALIFORNIA,****C**

- abrogation of common law defenses, 263.
- enactment of compensation law, 5.
- essential to liability that both employer and employé should be  
subject to act, 263.
- formal procedure under act, 266.
- forms used in administration of act, 267-287.
- mode of election by employer, 263.
- nature and scope of act, 262.
- primary liability for injuries, 263.
- reports of industrial accidents, 264.
- rules of practice of board, 265.
- text of act and construction by board, 263.
- work of commission, 12.

*[References are to Sections.]*

**CALL OF NATURE,**

whether within course of employment, 479.

**CANDY WORKS,**

classification under Washington act, 124.

**CANNERIES,**

classification under Washington act, 124.

**CANVASSER,**

injury in scope of employment, 488.

**CAPE OF GOOD HOPE,**

schedule, 104.

**CARPENTERS,**

casual employment, 440.

**CARRIERS,**

accident insurance under German code 1911, 601.

agricultural accident insurance under German code, 1911, 601.

determination of benefits under German code 1911, 601.

invalidity and survivors' insurance under German code 1911, 601.

German imperial insurance, 601.

navigation accident insurance under German code 1911, 601.

relation of insurance carriers to each other and to other bodies under German code 1911, 601.

sick insurance under German code 1911, 601.

**CAREY**

views on deprivation of jury trial in administration of acts, 98.

**CASUAL EMPLOYMENT,**

defined by Wisconsin commission, 233.

excluded from compensation, 255, 263, 326, 367, 440, 572.

inference of continuance of employment, 542.

meaning of term, 440.

**CASUALTY INSURANCE COMPANIES,**

**SEE INSURANCE COMPANIES.**

duty of companies to report New Jersey accidents, 258.

effect of California act on casualty insurance, 263.

first accident report under California act, 286.

forms under California act, 284.

insurance under Maryland act, 376a.

report of accident to commissioner of labor, 261.

report of accident under Wisconsin act, 249.

statistics of experience in New York, 37.

supplemental report under California act, 287.

under Michigan act, 355.

under Wisconsin act, 227.

[References are to Sections.]

**CEMENT WORK,**

classification under Washington act, 124.

**CERTIFICATES,**

See **FORMS.**

authority of Washington board to issue benefit certificates, 124.

claim for death under Federal act, 394.

compensation by court under British act, 577.

conclusiveness of certificate of medical referee, 561.

conditions to insurance certificate under Kansas act, 292.

continuing disability under Federal act, 381.

disablement under British act, 577.

Federal act, 390.

duty of British registrar to re-certify schemes, 577.

employer under Ohio act, 189, 193, 200, 210, 221.

inability to resume work under Federal act, 381.

lay witness in case of death under Ohio act, 208, 214, 219, 225.

lay witness generally under Ohio act, 190, 197, 204.

physician's proof of death under Ohio act, 209.

physician under Federal act, 389.

Kansas act, 292.

proof of death under Ohio act, 220.

revocation of insurance certificate under Kansas act, 292.

scheme under British act, 577.

termination of incapacity, 545.

undertaker under Ohio act, 207.

**CERTIFICATION,**

doubtful questions to Supreme Court under Rhode Island act, 367.

**CESSATION,**

SEE **TERMINATION.**

benefits under German invalidity and survivors insurance, 601.

**CHADWICK,**

concurring decision upholding Washington act, 127.

**CHARITABLE INSTITUTIONS,**

as employers, 437, 511.

**CHART,**

injuries under Washington act, 143, 146.

**CHEMICAL WORKS,**

factories under Kansas act, 292.

**CHEMIST,**

not workman within British act, 432.

[References are to Sections.]

CHICAGO CONFERENCE OF 1910,

- conclusions and recommendations, 11.
- personnel, 9.
- subjects discussed, 10.

CHIEF-JUSTICE WAITE,

- influence of decision in *Munn v. Illinois*, 27.

CHILDREN,

SEE INFANTS.

- defined in Washington act, 124.
- dependents under British act, 577.
  - California act, 263.
  - Illinois act, 326.
  - Kansas act, 292.
  - Massachusetts act, 303.
  - Michigan act, 355.
  - New Hampshire act, 296.
  - Nevada act, 290.
  - Rhode Island act, 367.
  - Wisconsin act, 227.
- illegitimate children as dependents, 503.
- includes stepchildren under Washington act, 124.
- posthumous children as dependents, 502.

CIRCULAR LETTERS,

- to employers by Wisconsin commission, 236.

CIRCUMSTANTIAL EVIDENCE,

- to prove accident, 447.

CITIES,

SEE MUNICIPAL CORPORATIONS.

- employer under California act, 263.
  - Michigan act, 355.
- instructions under Washington act, 141.
- monthly statement under Washington act, 135.

CLAIMS,

- See ASSIGNMENT; COMPENSATION; FORMS; NOTICE; PREFERENCES;  
PROCEDURE.
- affidavit to claim under Washington act, 153, 154.
- application for review under Massachusetts act, 321.
- assignability under California act, 263.
  - Kansas act, 292.
  - Nevada act, 290.
  - Rhode Island act, 367.
  - Wisconsin act, 227.

## [References are to Sections.]

CLAIMS—*Continued.*

- compensation personal, 515.
- compensation under Federal act, 389.
  - Illinois act, 334.
  - Massachusetts act, 318.
  - Washington act, 144.
- compensation for death under Federal act, 394.
- compromise, 516.
- commutation under various American acts, 420.
- copies of employes' claims sent to insurance companies under
  - Massachusetts act, 308.
- dependents' claim for compensation under Washington act, 152.
- determination of benefits under German code 1911, 601.
- duty to file under Federal act, 385.
- filing under Washington act, 124.
- for adjustment under Wisconsin act, 248.
- exemption under Michigan act, 355.
- endorsement under Federal act, 381.
- extinguishment by death under New Hampshire act, 296.
- forwarding under Federal act, 381.
- injuries under Federal act, 381.
- invalidity and survivors' insurance under German act 1911, 601.
- must be filed within six months in Illinois, 326.
- necessity of stating amount in notice under British act, 554.
- notice of claim of common law rights under Massachusetts act, 312.
- notice of injury under British act, 553.
  - California act, 275.
  - Massachusetts act, 303.
  - Michigan act, 363.
  - Wisconsin act, 247.
- notice of injury not claim for compensation, 553.
- payment under Federal act, 381.
- preferential nature, 227, 290, 296, 326, 367, 426.
- termination under German invalidity and survivors' insurance, 601.
- transmission to secretary of commerce under Federal act, 381.

## CLASSIFICATION,

- application under Ohio act, 177.
- causes of accidents in Germany, 47.
- employers under Ohio act, 171.
- industries by commissioner of insurance, 355.
- Ohio act not arbitrary, 172.
- risks under Massachusetts act, 303.
- rules governing statutes, 94.

[References are to Sections.]

**CLASSIFICATION**—*Continued.*

- under Washington act, 140.
- under Wisconsin statute, 228.
- validity of legislation, 71.
- whether compensation laws are proper classification, 94.

**CLASS LEGISLATION,**

- application to Montana act, 61.

**CLERKS,**

- authority of Ohio board to employ, 171.
- duty to keep records, 174.

**CLUMSINESS,**

- as effecting capacity, 521.

**COAL WORKERS,**

- covered by Montana act, 64.

**COERCION,**

- whether Wisconsin act coercive, 228.

**COLD,**

- whether injury accidental, 449.

**COLLATERAL HEIRS,**

SEE DEPENDENTS.

- dependents under Illinois act, 326.

**COLLECTION,**

- accident insurance under German code 1911, 601.
- contributions to insurance funds under German laws, 593.

**COLLECTORS,**

- injury whether within scope of employment, 488.

**COLLIERS,**

- wilful misconduct, 467.

**COMMISSIONER OF INSURANCE,**

- administration under Michigan act, 355.
- classification of industries under Michigan act, 355.

**COMMISSIONER OF LABOR,**

- duty to receive reports of New Jersey accidents, 258, 259.
- duties under New Hampshire act, 296.
- fourth special report, 8.

**COMMISSIONS,**

SEE BOARDS.

- creation under Washington act, 124.
- New York commission to investigate subject, 7.

[References are to Sections.]

**COMMISSIONS**—*Continued.*

salary of commissioners under Washington act, 124.  
work of state commissions, 12.

**COMMITTEES,**

administration of insurance associations under German code  
1911, 599.  
report of arbitration under Massachusetts act, 320.

**COMMON LAW,**

application of principles under Ohio act, 171.  
claim of right under Rhode Island act, 371, 372.  
deprivation of defenses by compensation acts, 71.  
defenses, 1, 2, 57.  
distinction between common law and liability acts, 1, 2, 3, 59.  
Germany, on master's liability, 15.  
legislature has powers to abrogate defenses, 228.  
notice of claim of right under Massachusetts act, 311.  
principles governing employers' liability, 1, 2.  
purpose of statutes to remedy defects, 172.  
relief furnished in twelve per cent. of cases of insurance, 33.  
rules of evidence on hearing before Ohio board, 171.  
statistics of workmen receiving compensation, 49.  
substitution of insurance and compensation laws, 33.  
waiver of rights under common law under Massachusetts act,  
303, 312.

**COMMON LAW DEFENSES,**

abrogation, 227, 255, 263, 290, 303, 326, 355, 367.  
right of state to abrogate, 307.

**COMMUTATION,**

SEE LUMP SUM PAYMENT.

awards and claim under various American acts, 367, 420.  
weekly payments under British acts, 572.

**COMPARATIVE NEGLIGENCE,**

adoption of principle in California, 263.  
Nevada, 290.

**COMPARISON,**

premium rates under Ohio law with liability insurance rates,  
180.

**COMPENSATION,**

See AWARDS; EXEMPTIONS; INCAPACITY; LUMP SUM PAYMENT; PAR-  
TIAL INCAPACITY; PREFERENCES; TOTAL DISABILITY;

WAITING PERIOD.

accident under German law prior to 1911, 583.

[References are to Sections.]

COMPENSATION—*Continued.*

- agricultural accident insurance under German code 1911, 601.
- alternative schemes under various American statutes, 423.
- amount, 515-545.
- amount where dependent illegitimate, 542.
- basis under Ohio act, 171.
- British compensation legislation, 18.
- burden of proof on application for reduction, 558.
- burden of payment under foreign laws, 100-122.
- commutation of awards and claims under various American acts, 420.
- commutation of weekly payments under British act, 572.
- compromise of claims, 516.
- consideration of profits of business carried on by injured workmen, 539.
- costs of unreasonable suit under Massachusetts act, 303.
- death of workman under compensation not bar to claim of dependent, 510.
- death under various American acts, 412.
- denial by reason of refusal to undergo medical examination under Kansas act, 292.
- dependents under Kansas act, 292.
- disability prolonged by failure to take exercise, 523.
- disbursements from Michigan accident funds, 355.
- discontinuance under Federal act, 381.
- doubled for wilful misconduct of employer under Massachusetts act, 303.
- death of injured workman while receiving compensation for previous injury, 543.
- deduction from compensation to dependents, 538.
- deduction of hospital fees, 535.
- deduction of poor relief given dependent, 538.
- diminution in earnings due to general fall in wages, 534.
- deduction while injured workman in prison, 536.
- duty of Ohio board to prepare and furnish applications, 171.
- exaggeration of condition of workman, 522.
- effect of acceptance of relief fund, 537.
- effect of bona fide efforts to obtain employment, 533.
- effect of certificate of termination of incapacity, 545.
- effect of receiving same or increase in earnings after injury, 540.
- form of agreement as to compensation under Massachusetts act, 317.
- injury after brief employment, 542.
- investment under British act, 577.
- liability under Wisconsin act, 227.



[References are to Sections.]

COMPENSATION—*Continued.*

- loss of sight as total or partial disability, 520.
- liability as between owner and charterer of vessel, 441.
- lump sum payment, 326, 367, 517, 577.
- medical and surgical aid under various American acts, 355, 417.
- methods of computation, 227, 296, 585.
- manner of payment under various American acts, 255, 263, 292, 303, 326, 355, 367, 381, 419, 585, 601.
- no waiver allowed under Illinois act, 326.
- partial disability under various American acts, 416.
- pain and suffering not recompensed, 524.
- payment of navigation accident insurance under German act 1911, 601.
- partial incapacity due to clumsiness on recovery, 521.
- periodical payments, 255, 292.
- persons eligible under British Columbia schedule, 103.
- probable earnings of infant, 541.
- receipt under Massachusetts act, 323.
- reduction because of ability to do light work, 532.
  - change of circumstances, 531.
- right as dependent on proximate cause of death, 518.
- right is personal, 515.
- right to consider savings and insurance of employé, 303, 355.
- scale under British act, 577.
  - Arizona act, 375a.
  - California act, 263.
  - Kansas act, 292.
  - Lloyd-George act, 578.
  - Maryland act, 376a.
  - Michigan act, 355.
  - Nevada act, 290.
  - New Hampshire act, 296.
  - New Jersey act, 255.
  - New York act, 56.
  - Rhode Island act, 367.
  - various American acts, 426.
  - Washington act, 124.
  - Wisconsin act, 227.
- security of payments under Austrian schedule, 101.
  - Belgian schedule, 102.
- settlement receipt under Massachusetts act, 324.
- stipulation under California act, 265.
- total incapacity, 414, 519.
- waiting period under various acts, 290, 303, 355, 367, 376, 577, 584, 601.
- weekly payments under Massachusetts act, 303.
- when commences under various American acts, 263, 414.

[*References are to Sections.*]

## COMPENSATION LAWS,

See NAMES OF VARIOUS STATES AND COUNTRIES.

- argument for joint contribution by employer and employé to fund, 53.
- distinguishing characteristics, 5.
- economic basis, 33-53.
- English plan as remedy, 51.
- exercise of taxing power, 83-91.
- extra-territorial effect, 465.
- limitations of legislative power, 95.
- nature of obligation imposed, 67.
- nature of administration, 96-97.
- proper exercise of police power, 93.
- public purpose within tax power, 87.
- provision for test of validity of Washington act, 124.
- relationship between employer and employé, 70.
- validity as to employé, 72.
  - employer, 71.
  - State, 74.
- whether act may be optional, 99.
- whether administration executive or judicial, 97.
- whether laws lack uniformity and equality, 94.

## COMPRESSED AIR,

Workers protected by New York act, 56.

## COMPROMISE,

See SETTLEMENT.

- claims, 516.
  - under California act, 263.
  - under Kansas act, 292.
  - under Nevada act, 290.
  - Wisconsin act, 227.
- essential of fairness, 516.
- inadequacy, 516.

## COMPULSORY INSURANCE,

- basis, 27.
- exemptions under German laws prior to 1911, 593.
- Ohio, 169.
- personal liability of employer under German laws prior to 1911, 588.
- Washington, 124.
- who subject under German law, 582.
- under German law prior to 1911, 579-593.

## COMPULSORY LAWS,

- Arizona act, 375a.
- power of State to enact, 528.

*[References are to Sections.]***COMPUTATION,**

See AVERAGE EARNINGS; AVERAGE WEEKLY EARNINGS; AVERAGE ANNUAL EARNINGS; COMPENSATION.

**CONCURRENT EMPLOYMENTS,**

compensation under Kansas act, 292.  
effect, 442, 577.

**CONFINEMENT,**

compensation to women under German law, 581.

**CONNECTICUT,**

delegates to Chicago Conference, 9.

**CONSERVATOR,**

See GUARDIANS.

appointment for incompetent under Illinois act, 326.  
petition for appointment under Illinois act, 346.

**CONSTITUTION,**

agricultural accident insurance under German code, 1911, 601.  
accident insurance under German code, 1911, 601.  
sick insurance under German code, 1911, 601.  
navigation accident association under German code, 1911, 601.

**CONSTITUTIONAL LAW,**

See DUE PROCESS; EQUAL PROTECTION OF THE LAWS.  
application of seventh amendment, 67.  
construction of Massachusetts act, 307.  
Montana act, 60-63.  
New York act, 57.  
Ohio act, 172.  
Washington act, 127.  
Wisconsin act, 228.  
deprivation of right to trial by jury, 98.  
provisions for test of validity of Washington act, 124.

**CONSTITUTIONAL LIMITATIONS,**

power of legislature, 95.  
right to enact laws, 67.  
taxing power, 83.  
whether compensation laws infringe, 76.

**CONSTRUCTION,**

California act by board, 263.  
Federal act, 396-399.  
New Jersey act, 259.  
Ohio act by Board and Attorney-General, 171.  
popular use of words, 573.  
Wisconsin act by commission, 229-234.

*[References are to Sections.]*

**CONTEMPT,**

attachment for refusal to answer inquiries of Ohio board, 171.  
power to enforce process by contempt in Wisconsin, 228.

**CONTINGENT FEES,**

right under New Hampshire act, 296.  
must be approved in Rhode Island, 367.  
necessity for approval under Kansas act, 292.

**CONTINUANCE,**

adjournment of hearings under Wisconsin act, 227.  
hearing before California board, 263.  
power of Wisconsin commission to grant, 235.  
under Ohio act, 174.

**CONTRACTOR,**

See **CONTRACTOR, PRINCIPAL CONTRACTOR, EMPLOYER, INDEPENDENT.**

**CONTRACTOR.**

statement of wages under Washington act, 134.

**CONTRACTS,****See AGREEMENTS.**

as basis of relation of employé under Wisconsin statute, 227.  
concurrent contracts of service, 442.  
exemption of employer under various American acts, 263, 367,  
428, 514.  
fraudulent where entered into by beneficiary within a week  
after injuries under Illinois act, 326.  
implications under New Jersey contract of hire, 255.  
between employer and employé as to compensation under  
Rhode Island act, 367.  
between insurer and employé under Massachusetts act, 308.  
between employer and employé under Arizona act, 375a.  
between employer and employé under Maryland act, 376a.  
obligation not infringed by Ohio statute, 172.  
insurance contract filed with Maryland insurance commission,  
376a.  
right of employer to contract with servant under British act,  
577.  
supplementary act saving existing contracts in New Jersey, 256.  
waiving effects of Montana act, 64.  
what is contract of service, 511.  
whether compensation laws violate contract clause or constitu-  
tion, 92.

**CONTRIBUTORY NEGLIGENCE,****See WILFUL MISCONDUCT.**

abolition of defense under various American statutes, 292, 303,  
326, 355, 367, 401.  
defense at common law, 1.

[References are to Sections.]

**CONTRIBUTORY NEGLIGENCE**—*Continued.*

- definition of "wilful misconduct" by Wisconsin commission, 231.
- deprivation of defense by compensation acts, 71.
- effect of wilful misconduct under British act, 467.
  - under Federal act, 378.
  - Kansas act, 292.
  - Michigan act, 355.
  - Rhode Island act, 367.
- intentional injuries under Washington act, 124.
- judicial origin, 57.
- principle of comparative negligence operative in California, 263.
  - Nevada, 290.
- right of state to abrogate defense, 307.
- wilful misconduct of employé, 577, 583.
- wilful negligence of employé under Illinois act, 326.

**CONTROVERSIES,**

See **ARBITRATION ; DISPUTES.**

**CONVICTS,**

- deduction of compensation while injured workman in prison, 536.

**COPIES,**

- claims under Massachusetts act, 308.
- evidence taken by stenographer under Ohio act, 171.

**CORPORATIONS,**

- employers under California act, 263.
  - Michigan act, 355.
  - Nevada act, 290.
  - New Jersey act, 255.
  - Wisconsin act, 227.
- mode of service of notice under British act, 577.

**COSTS,**

- See **EXPENSES ; FEES ; FUNERAL EXPENSES.**
- arbitration proceedings under British act, 577.
- arbitrator under Kansas act, 292.
- assessment under Massachusetts act, 322.
- druggist bill under Ohio act, 198, 202, 212, 223.
- fees on appeal from California award, 263.
- medical examination under Michigan act, 355.
- not taxed where employer does not dispute liability, 547.
- suit under Nevada act, 290.
- under British act, 571.
  - German code, 1911, 601.
  - Ohio act, 171.
  - Wisconsin act, 227.

[References are to Sections.]

**COSTS—Continued.**

- undertaker's bill under Ohio act, 207, 218.
- unreasonable action under Massachusetts act, 303.

**COUNTIES,**

- employer under California act, 263.
- Michigan act, 355.
- Wisconsin act, 227.
- instructions under Washington act, 141.

**COURSE OF EMPLOYMENT,**

See SCOPE OF EMPLOYMENT.

**COURT OF CONCILIATION,**

- under Wisconsin act, 228.

**COURT PHYSICIAN,**

See MEDICAL EXAMINATION.

**COURTS,**

See ARBITRATION, APPEAL.

- abolition of jurisdiction by Washington act, 124.
- defined in British act, 577.
- entry of judgment on award under Kansas act, 292.
- filing awards under Wisconsin act, 227.
- jurisdiction of Illinois act, 326.
- New Hampshire act, 296.
- Rhode Island act, 367.
- procedure in Rhode Island Superior Court, 373.
- submission of disputes under New Jersey act, 255.

**CREOSOTING WORKS,**

- classification under Washington act, 124.

**CRUTCHES,**

- supply under California act, 263.
- Wisconsin act, 227.

**CULLEN,**

- concurring opinion in New York case deciding invalidity of act, 57.

**CUNNINGHAM V. NORTHWESTERN IMPROVEMENT CO.,**

- decision, 62.

**D**

**DEATH,**

See DEPENDENTS, FUNERAL EXPENSES.

- certificate of lay witness under Ohio act, 208, 214, 219, 225.
- compensation under Austrian schedule, 101.
- Arizona act, 375a.
- Belgium schedule, 102.

[References are to Sections.]

**DEATH—Continued.**

- British act, 107, 577.
- British Columbia schedule, 103.
- California act, 263.
- Cape of Good Hope schedule, 104.
- Danish schedule, 105.
- Kansas act, 292.
- Federal act, 378, 381, 394.
- Finland schedule, 106.
- French schedule, 107.
- German schedule, 108.
- Greek schedule, 110.
- Hungarian schedule, 111.
- Illinois act, 326.
- Italian schedule, 112.
- Luxemburg schedule, 113.
- Maryland act, 376a.
- Massachusetts act, 303.
- Michigan act, 355.
- Montana act, 64.
- Nevada act, 290.
- New Hampshire act, 296.
- New York act, 56.
- New Zealand schedule, 115.
- Norwegian schedule, 116.
- Ohio act, 171.
- Rhode Island act, 367.
- Russian schedule, 118.
- South Australian schedule, 119.
- Spanish schedule, 121.
- Swedish schedule, 120.
- various American acts, 412.
- West Australian schedule, 122.
- Wisconsin act, 227.
- druggist's cost bill under Ohio act, 212, 223.
- duty of Ohio board to prepare and furnish blank forms for proof, 171.
- effect to abate actions under Rhode Island act, 367.
- effect of death of injured employé under Michigan act, 355.
- effect of death while workman receiving compensation for previous injury, 543.
- employer's certificate and oath under Ohio act, 210.
- expenses of last sickness under Massachusetts act, 303.
- extinguishment of claim under Illinois claim, 326.
- fee bill of physician under Ohio act, 222.
- first notice under Ohio act, 184.

[References are to Sections.]

**DEATH—Continued.**

from anaesthetic whether accidental, 450.  
investment of claims paid under British act, 574.  
necessity of report under Illinois act, 326.  
payment of compensation where estate not administered under  
New Jersey act, 255.  
payment to personal representative under Rhode Island act,  
367.  
payment to representative under Massachusetts act, 303.  
parties to proceedings under California act, 265.  
physician's certificate under Ohio act, 209.  
physician's fee bill under Ohio act, 211.  
presumption from lapse of time, 507.  
procedure under Federal act, 393.  
proof by physician under Washington act, 150.  
proof by undertaker under Washington act, 151.  
report under Federal act, 381, 388.  
report under Ohio factory act, 173.  
scale of compensation under Kansas act, 292.  
time for filing claim under British act, 577.  
undertaker's certificate and cost bill under Ohio act, 207, 218.  
workman under compensation not bar to claim of dependents,  
510.

**DEATH BENEFITS,**

See **DEATH.**

under Federal act, 381, 388.  
under Michigan act, 355.

**DECISIONS,**

application of analogous decisions, 77-82.  
by department under Federal act, 381.  
conclusiveness of decisions of Massachusetts board, 303.  
construction of Montana act, 62.  
New York act, 57.  
opinion sustaining Massachusetts act, 307.  
Ohio act, 172.  
Washington act, 127.  
Wisconsin act, 228.  
under German code, 1911, 601.  
Wisconsin commission, 229-234.

**DECLARATIONS,**

admissibility of declaration of injured workman, 560.  
by employer under New Hampshire act, 299.

**DEFAULT,**

payment of premiums under Michigan act, 355.



[*References are to Sections.*]

# DEFAULTING EMPLOYERS,

under Washington act, 124.

# DEFENSES,

See ABROGATION OF DEFENSES.

abrogation of common law defenses under various American statutes, 401.

enforcing arbitration, award under Massachusetts act, 303.

legislative power to abrogate common law defenses, 228.

# DEFINITIONS,

"accident," 446.

"accident arising out of and in the course of employment," 472.

"accidents" under British act, 573.

Federal act, 397.

"actual dependents" under New Jersey act, 255.

"agriculture" under German code, 1911, 601.

"association" in Massachusetts act, 303.

"average weekly earnings," 303, 355, 367, 525-530.

"beneficiary" in Washington act, 124.

"building work," in Kansas act, 292.

"casual employment" by Wisconsin commission, 233.

"child" in Washington act, 124.

"compensation laws," 100.

"courts" in British acts, 577.

"dependent," 124, 234, 290, 292, 303, 413, 496, 577.

"disease without injury" under Federal act, 398.

"due process," 97.

"earnings" under German code, 1911, 601.

"electrical work," in Kansas act, 292.

"employé," 227, 263, 303, 326, 355, 418.

"employer," 56, 124, 227, 255, 290, 292, 303, 355, 367, 511, 577.

"employment," 56, 230, 326, 601.

"employment on railways," in Kansas act, 292.

"engineering work," 124, 292.

"factories," 124, 292.

"fiscal year" under German code, 1911, 601.

"in course of employment" under Federal act, 399.

"industrial accident" under German code, 1911, 598.

"injury," 124, 397, 398.

"invalid" in Washington act, 124.

"manager" in British act, 577.

"members of a family," in Kansas act, 292, 577.

"mill" in Washington act, 124.

"mine," 124, 292.

"notice" by Wisconsin commission, 233.

"outworker" in British act, 577.

[References are to Sections.] )

**DEPENDENTS—Continued.**

- "permanent partial disability," 124.
- "police force" in British act, 577.
- "port" in British act, 577.
- "quarry," 124, 292.
- "railway" in Kansas act, 292.
- "seaman" in British act, 577.
- "ship" in British act, 577.
- "State employé" in Ohio act, 171.
- "subscriber" in Massachusetts act, 303.
- "support" by Wisconsin commission, 231, 234.
- "vessel" in British act, 577.
- "wilful misconduct," 171, 231.
- "wilful negligence" under New Jersey act, 255.
- "workman," 56, 124, 290, 292, 432, 572.
- "workshop" in Washington act, 124.

**DELAY,**

- prejudice by delay of service of notice of injury, 553.

**DEMAND,**

- jury trial on appeal under Illinois act, 351.
- medical examination in attorney's office, 557.
- quarterly payment under Washington act, 138.
- workman for presence of personal physician, 556.

**DENMARK,**

- schedule, 105.

**DEPARTMENT OF COMMERCE AND LABOR,**

- determination of questions under Federal act, 383.
- medical examination under Federal act, 381.

**DEPARTMENT OF LABOR,**

- report of accidents under New Jersey act, 258.

**DEPARTMENT OF MINES AND FORESTRY,**

- employés protected by Federal act, 380.

**DEPENDENTS,**

See **CHILDREN**; **GRANDCHILDREN**; **GRANDPARENTS**; **ILLEGITIMATES**;  
**STEPBROTHERS** AND **SISTERS**.

- actual, under New Jersey act, 255.
- aliens, 500.
- children, 227, 263, 303.
- compensation under various American acts, 56, 152, 171, 227, 263, 292, 375a.
- death of workman under compensation not bar to claim of dependent, 509.

[References are to Sections.]

**DEPENDENTS—Continued.**

- defined, 124, 234, 290, 292, 303, 413, 496, 577.
- husband and wife under California act, 203, 263.
- illegitimate children, 503, 544.
- members of family under Kansas act, 292.
- mentally defective dependents under Rhode Island act, 367.
- mother of injured child dependent though supported by husband, 505.
- mother total dependent of one of several sons, 497.
- necessity of appointment of administrator of dependent, 509.
- necessity that they be members of family of deceased, 355, 367.
- not fatal that dependent able to maintain himself, 496.
- parents, 499.
- partial dependent under Nevada act, 290.
- paupers, 501.
- posthumous children, 502.
- presumption of death from lapse of time, 507.
- procedure for apportionment, 564.
- proof under Ohio act, 217.
- question determined by status at time of death under California act, 263.
  - status at time of accident under Wisconsin act, 227.
- question not affected by the fact of receipt of money, 496.
- right of representative of deceased, 508.
- settlement of question under British act, 577.
- total and partial dependents of same workman, 498.
- under California act, 263.
  - Federal act, 378.
  - Illinois act, 326.
  - Maryland act, 376a.
  - Massachusetts act, 303.
  - Michigan act, 355.
  - New Hampshire act, 296.
  - Rhode Island act, 367.
  - Wisconsin act, 227.
- where one is dependent on more than one injured workman, 504.
- wife separated from husband, 506.

**DEPOSIT,**

- Ohio insurance fund, 171.
- Maryland insurance fund, 376a.

**DEPOSITIONS,**

- power of Ohio officers to take, under Ohio law, 171.
- taken outside jurisdiction of Ohio board, 171.
- use in hearings under California act, 265.
  - under Ohio act, 174.
  - under Wisconsin act, 235.

*[References are to Sections.]*

## DEPUTIES,

under Washington act, 124.

## DERRICKS,

operators protected by New York act, 56.

by Arizona act, 375a.

## DIMINUTION,

disability under Washington act, 124.

## DIRECTIONS,

authority of Washington board to promulgate, 128-130.

## DISABILITY,

certificate of continuing under Federal act, 381.

certificate under Federal act, 390.

compensation under Austrian schedule, 101.

Belgian schedule, 102.

British act, 577.

British Columbia schedule, 103.

British schedule, 109.

Cape of Good Hope schedule, 104.

Danish schedule, 105.

Finland schedule, 106.

French schedule, 107.

German schedule, 108.

Greek schedule, 110.

Hungarian schedule, 111.

Illinois act, 326.

Italian schedule, 112.

Luxemburg schedule, 113.

Montana act, 64.

Netherland schedule, 114.

Nevada act, 290.

Norwegian schedule, 116.

New Zealand schedule, 115.

Queensland schedule, 117.

Russian schedule, 118.

South Australian schedule, 119.

Spanish schedule, 121.

Swedish schedule, 120.

West Australian schedule, 122.

medical and hospital services under Illinois act, 326,

notice of continuing disability under Federal act, 381.

opinion as to termination under Federal act, 381.

procedure under Federal act, 385.

prolonged by failure to take exercise, 523.

report of termination under Federal act, 381, 387.

when compensation begins under various American statutes,  
414.

*[References are to Sections.]*

**DISAGREEMENTS,**

report to secretary of commerce under Federal act, 381.

**DISAPPROVAL,**

claims under Federal act, 381.

**DISBURSEMENT,**

funds under Washington act, 124.

first aid fund, 126.

Michigan accident fund, 355.

Ohio insurance fund, 171.

**DISCHARGE,**

incapacitated person for misconduct, 470.

injury received on premises after discharge, 491.

right where compromise calls for employment of injured workman, 516.

whether employé in course of employment while removing tools, 479.

**DISCONTINUANCE,**

compensation under Federal act, 381, 392.

**DISEASE,**

See OCCUPATIONAL DISEASES.

acceleration by accident, 463.

contracted in course of employment, 398.

without injury under Federal act, 398.

**DISFIGUREMENT,**

compensation under Illinois act, 326.

**DISMISSAL,**

See DISCHARGE.

incapacitated person for misconduct, 470.

injury received on premises after discharge of servant, 491.

whether dismissed employé in course of employment while removing tools, 479.

**DISPUTES,**

See ARBITRATION ; SETTLEMENT.

amount of compensation under Nevada act, 290.

arbitration under Illinois act, 326, 347.

Michigan act, 355.

between commissioner and employer under Michigan act, 355.

controversies involving sick insurance under German code, 1911, 601.

method of settlement under California act, 263.

necessity to give arbitrator jurisdiction under British act, 547.

of claims under New Jersey act, 255.

[References are to Sections.]

**DISPUTES**—*Continued.*

- procedure under New Jersey act, 255.
- settlement by arbitrator under Kansas act, 292.
- settlement under British act, 577.
  - under Arizona act, 375a.
  - California act, 263.
  - Federal act, 381.
  - Massachusetts act, 303.
  - Rhode Island act, 367.
  - various foreign schedules, 101-120.
- submission under Wisconsin commission, 227.

**DISTRESS COMMITTEE,**  
as employer, 511.

**DISTRIBUTION,**  
among dependents under New Jersey act, 255.  
compensation to dependents under Illinois act, 326.  
funds in case of repeal of Washington act, 124.  
funds on repeal of Michigan act, 355.

**DIVIDENDS,**  
employés' insurance association, 303.

**DIVORCE,**  
dependency where wife separated from husband, 506.  
effect on right to compensation under Washington act, 124.

**DOCKS,**  
hazardous employment under Washington act, 124.

**DOCKETS,**  
Ohio board of awards, 174.

**DOCUMENTS,**  
See Books.  
power of Ohio board to require production, 171.

**DOMESTIC SERVANTS,**  
beneficiaries of sick insurance under German code, 1911, 601.  
excepted in Michigan act, 355.

**DRAINAGE,**  
instructions under Washington act, 141.

**DREDGES,**  
classification under Washington act, 124.  
hazardous employment under Washington act, 124.

**DROWNING,**  
inference of accidental, 447.

[*References are to Sections.*]

**DRUGGIST,**

cost bill under Ohio act, 188, 195, 202, 212, 223.

**DRUNKENNESS,**

See INTOXICATION.

**DUE PROCESS,**

administration of compensation act, 97.

meaning of term, 97, 172.

not infringed by Massachusetts act, 307.

Ohio act, 172.

Washington act, 127.

Wisconsin act, 228.

taking of property under New York compensation act, 56.

whether compensation laws infringe, 76.

**DYNAMITE,**

See EXPLOSIVES.

covered by New Hampshire act, 296.

workers covered by New York act, 56.

**E****EARNINGS,**

See AVERAGE WEEKLY EARNINGS, COMPENSATION.

computation under Kansas act, 292.

Illinois act, 326.

Rhode Island act, 367.

definition in German code, 1911, 601.

**ECONOMICS,**

basis of compensation and insurance laws, 33-53.

results of accidents under old system, 44.

specific provisions against insecurity of workmen, 52.

**ELECTION,**

duty of electing employer to post notice, 355.

employé under California act, 274.

Arizona act, 375a.

Ohio act, 171.

Illinois act, 329.

Kansas act, 292.

Maryland act, 375a.

Michigan act, 355.

Rhode Island act, 367.

Wisconsin act, 245.

employer under California act, 263.

Kansas act, 292, 294.

Michigan act, 355.

New Hampshire act, 296.

Ohio act, 171.

[References are to Sections.]

**ELECTION—Continued.**

- Rhode Island act, 367.
- Wisconsin act, 227.
- mode of election under Michigan act, 355.
- notice of non-election by employé under Illinois act, 326.
- Michigan act, 361-362.
  - Wisconsin act, 240, 246.
- presumption of election by Illinois employer, 326.
- record under Michigan act, 355.

**ELECTION OF REMEDIES,**

- compensation and assignment of claim under Washington act, 164, 165.
- effect of filing claim under Massachusetts act, 303.
- nature of obligation imposed by insurance laws, 67.
- under British act, 546, 575, 577.
  - Kansas act, 292.
  - Massachusetts act, 303.
  - New Hampshire act, 296.
  - New York act, 56.
  - various American acts, 422.
- under Ohio act where employer guilty of wilful negligence, 171.
- whether act may be optional, 99.

**ELECTIVE ADOPTION,**

- provisions of Washington act, 137.

**ELECTIVE COMPENSATION,**

- under New Jersey act, 255.

**ELECTRICAL WORK,**

- defined in Kansas act, 292.

**ELECTRICITY,**

- employment covered by Illinois act, 326.
  - Under Arizona act, 375a.
  - Kansas act, 292.
  - New York act, 56.
  - Nevada act, 290.
  - New Hampshire act, 296,

**ELECTRIC LIGHT PLANTS,**

- Classification of light plants under Washington act, 124.
- factories under Kansas act, 292.
- hazardous employment under Washington act, 124.

**ELECTROTYPING,**

- hazardous employment under Washington act, 124.



*[References are to Sections.]*

**ELEMENTS,**

whether injury from elements accidental, 449.

**ELEVATORS,**

Classification under Washington act, 124.

hazardous employment under Washington act, 124.

operation covered by Nevada act, 290.

Arizona act, 375a.

New York act, 56.

power to regulate rates, 93.

**EMERGENCIES,**

acts in emergencies as within scope of employment, 485.

**EMINENT DOMAIN,**

right to trial by jury, 97.

similarity of attributes of taxation, 85.

whether compensation laws amount to taking of property, 76.

**EMPEROR WILLIAM I,**

insurance message, 16.

**EMPLOYERS,**

See ELECTION.

catalogue in Michigan act, 355.

certificate and oath under Ohio act, 189, 193, 200, 210, 221.

declaration under New Hampshire act, 299.

defined, 56.

defined in British act, 577.

definitions in various American statutes, 124, 227, 255, 263, 290,  
292, 303, 367, 404, 418, 511.

duty to keep on hand supply of blanks, under Ohio act, 171.

duty to verify answers to inquiries of Ohio board, 171.

immaterial that he is a non-resident, 124.

letter of instructions under Washington act, 142.

notice required under various American statutes, 179, 239, 240,  
241, 310, 407.

report of accident under New Jersey act, 260.

right to contract for insurance under Maryland act, 376.

rules and directions by Washington commission, 129.

validity of compensation acts as to employer, 71.

**EMPLOYERS' LIABILITY COMMISSION,**

creation under New Jersey act, 257.

**EMPLOYERS' LIABILITY LAWS,**

distinguishing characteristics, 2, 3.

distinction between common law and liability acts, 69.

*[References are to Sections.]***EMPLOYES,**

See GOVERNMENT EMPLOYES.

covered by American acts, 290, 355, 406.

claim of common law right under Rhode Island act, 371.

defined in British act, 572.

California act, 263.

Illinois act, 326.

Kansas act, 292.

Massachusetts act, 303.

Michigan act, 355.

Nevada act, 290.

Washington act, 124.

Wisconsin act, 227.

letter of instructions under Washington act, 142.

notice required under various American statutes, 245, 246, 274,  
326, 407, 410.

presumption of acceptance under Kansas act, 292.

protected under German code, 1911, 598.

public employment under California act, 263.

right to contract for insurance under Maryland act, 376a.

rules and directions by Washington commission, 130.

term excludes members of employer's family, 445.

temporary lending or hiring, 441.

validity of compensation acts as to employés, 72.

who are workmen within meaning of statutes, 432-445.

**EMPLOYES' INSURANCE ASSOCIATION,**

appointment of board of directors under Massachusetts act, 303.  
assessments, 303.

authority to make and enforce rules and regulations, 303.

board of directors, 303.

constitutionality of act, 307.

creation under Massachusetts act, 303.

dividends, 303.

duty to notify board of termination of employer's insurance,  
308.

effect of employer ceasing to be a subscriber, 303.

expenses, 303.

insurance association license, 303.

notice of change of insurer, 308.

notice that employer has ceased to be a subscriber, 314.

notice to subscribers under Massachusetts act, 303.

officers, 303.

policies under Massachusetts act, 303.

premiums, 303.

quorum under Massachusetts act, 303.

reports of accident, 308.

[References are to Sections.]

**EMPLOYES' INSURANCE ASSOCIATION—Continued.**

statute authorizing advances from state treasury, 306.  
subject to investigation by state, 303.  
under Maryland act, 376a.

**EMPLOYMENT,**

construed by Wisconsin commission, 230.  
covered by various American acts, 403.  
defined by Illinois act, 326.  
New York act, 56.  
effect of unauthorized employment, 443.  
subject to insurance under German code, 1911, 601.  
when commences, 486.

**ENDORSEMENT,**

claims under Federal act, 381.

**ENGINEERING WORK,**

hazardous employment under Washington act, 124.  
operation covered by Kansas act, 292.

**EPILEPSY,**

injury while undergoing fit, 460.

**EQUAL PROTECTION OF LAWS,**

application of principle under Montana statute, 62.  
satisfied by Washington act, 127.  
whether condition observed in compensation laws, 94.

**EQUALITY AND UNIFORMITY,**

whether conditions met in compensation acts, 91.

**ESTOPPEL,**

employé to sue under Ohio act, 171.  
under British act, 546.

**ETHICS,**

ethical basis of insurance system, 32.

**EVIDENCE,**

See BURDEN OF PROOF; DEPOSITIONS; PRESUMPTIONS.  
admissible at hearing under California act, 263.  
admissibility of declaration of injured workman, 560.  
circumstantial evidence to prove accident, 447.  
conclusiveness of certificate of medical referee, 561.  
copies of evidence taken by stenographer under Ohio law, 171.  
inference that injury is result of accident, 447.  
medical examination under Kansas act, 292.  
presumption of acceptance of California act, 263.  
Illinois act, 326.  
Kansas act, 292.

## [References are to Sections.]

**EVIDENCE—Continued.**

- presumption of death from lapse of time, 507.
- rules governing proof of claims under Ohio act, 174.
- rules on hearing before Ohio board, 171.
- testimony by court physician under Kansas act, 292.
- use of depositions under California act, 265.

**EXAGGERATION,**

See **SIMILATION.**

- effect on compensation, 522.

**EXAMINERS,**

- authority of California board to employ, 263.
- appointment under state acts, 171, 227, 235, 265.

**EXCUSE,**

- failure to give timely notice under British act, 553.
- ignorance not an excuse for failure to give notice, 553.

**EXAMINATION,**

See **MEDICAL EXAMINATION.**

**EXCEPTIONS,**

- at hearings under California act, 265.

**EXECUTION,**

See **ATTACHMENTS.**

- levy against awards, 171, 255, 292, 326.

**EXECUTIVE RECOMMENDATIONS,**

- compensation law by President Roosevelt, 13.

**EXEMPTIONS,**

- validity of contracts for exemption under various American acts, 56, 64, 124, 171, 227, 255, 263, 290, 326, 355, 428, 514.
  - British act, 577.
  - Federal act, 378.
  - Maryland act, 376a.
- compulsory insurance under German laws prior to 1911, 593.

**EXERCISE,**

- disability prolonged by failure to take, 523.

**EXISTING ACTIONS,**

- not affected by Michigan act, 355.

**EXPENSES,**

See **ADMINISTRATION; FUNERAL EXPENSES; INSURANCE; MEDICAL ATTENDANCE; NURSING.**

- administration of State acts, 171, 227.
- last sickness under New Jersey act, 255.
- New Jersey commission, 257.
- employés' insurance association, 303.

*[References are to Sections.]*

**EXPERT EXAMINERS,**

authority to employ, 171, 263.

**EXPLOSIVES,**

manufacture covered by Illinois act, 326.

Kansas act, 292.

New Hampshire act, 296.

Nevada act, 290.

New York act 56.

schedule of compensation for powder works under Washington act, 124.

violation of rules as to position of workman, 475.

**EX-PRESIDENT ROOSEVELT,**

views on constitutionality of New York act, 58.

**EXTENSION,**

See CONTINUANCE.

hearings, 235, 265.

**EXTENSION LAWS,**

Germany, 582.

**EXTRA-HAZARDOUS EMPLOYMENT,**

covered by Illinois act, 326.

Montana act, 61, 64.

Nevada act, 290.

New York act, 56.

enumeration in Washington act, 124.

**EXTRATERRITORIAL EFFECT,**

compensation laws, 465.

**EYES,**

See LOSS OF SIGHT.

compensation for loss under various State acts, 64, 255, 290, 303, 355, 367.

loss of sight permanent disability under Illinois act, 326.

loss of sight as total or partial disability, 520.

reduction of compensation by reason of impairment, 531.

whether injuries accidental, 456.

**F**

**FACE,**

compensation for disfigurement under Illinois act, 326.

**FACTORIES,**

defined in Kansas act, 292.

Washington act, 124.

employment covered by New Hampshire act, 296.

[References are to Sections.]

**FACTORIES—Continued.**

- posting directions to employes under Washington act, 131.
- operation covered by Kansas act, 292.
- schedule of compensation under Washington act, 124.

**FACTORY ACTS,**

- effect of breach, 513.
- Ohio, 173.

**FAMILY,**

- exclusion of members from benefits of acts, 445.

**FARM WORKERS,**

- See **AGRICULTURAL WORKERS,**
- under British act, 436.

**FATAL ACCIDENT,**

- See **ACCIDENTS ; DEATH.**
- statistics showing number receiving settlement, 41.

**FAULT,**

- See **NEGLIGENCE.**
- ground of recovery under common and liability laws, 1-4.
- question in prevention of accidents, 36.

**FEDERAL EMPLOYES' COMPENSATION ACT,**

- construction, 396-399.
- enactment, 5.
- formal procedure, 382.
- forms and procedure, 383-399.
- nature and scope, 377.
- rules and regulations, 381.
- text of act of 1908, 378.
- text of act of 1911, 379.
- text of act of 1912, 380.

**FEE BILL,**

- druggist under Ohio act, 202.
- medical under Ohio act, 196, 203, 213, 224.
- physician under Ohio act, 187, 194, 201, 211, 222.

**FEES,**

- See **COSTS.**
- arbitration under Massachusetts act 303.
- attorneys under various American acts, 375a, 430.
- contingent under Rhode Island act, 367.
- medical examination, 355, 375a.
- medical witnesses under Washington act, 124.
- on review of award under California act, 263.

[References are to Sections.]

**FEES—Continued.**

service of subpoenas under Ohio act, 171.  
surgeons and dentists under British act, 577.  
under British act, 571.  
under German code, 1911, 601.  
under Wisconsin act, 227.  
under Massachusetts act, 303.  
witnesses under Massachusetts act, 303.

**FEET,**

compensation for loss under Massachusetts act, 303.  
Maryland act, 376a.  
Michigan act, 355.  
Nevada act, 290.  
New Jersey act, 255.  
Rhode Island act, 367.  
loss total disability under Illinois act, 326.

**FELLOW SERVANT RULE,**

deprivation of defense by compensation acts, 71.  
California, 263.  
Illinois act, 326.  
Kansas act, 292.  
Massachusetts act, 303.  
Michigan act, 355.  
Nevada, 290.  
New Jersey act, 255.  
Ohio act, 171.  
Rhode Island act, 367.  
various American statutes, 401.  
Wisconsin act, 227.  
indemnity for injury, 462.  
judicial origin, 57.  
rule of common law, 1.  
right of state to abrogate defense, 307.

**FERRIES,**

hazardous employment under Washington act, 124.

**FICHTE,**

influence on insurance laws, 21.

**FILING,**

awards under Kansas act, 292.  
notice of filing claim under California act, 277.

**FINAL ADJUSTMENT,**

agreement under Rhode Island act, 374.  
voucher under Washington act, 163.

*[References are to Sections.]*

**FINDINGS,**

- by Wisconsin commission, 227.
- conclusiveness under Michigan act, 355.
  - Nevada act, 290.
- duty of California board to make and file, 263.
- entry by Wisconsin commission, 253.
- grounds for setting aside under California act, 263.
- modification by Ohio board, 171.

**FINES,**

- under Montana act, 64.

**FINGERS,**

- compensation for loss under Massachusetts act, 303.
  - Michigan act, 355.
  - New Jersey act, 255.
  - Rhode Island act, 367.

**FINLAND,**

- schedule, 105.

**FIREMEN'S FUND CASES,**

- analogy to compensation acts, 82.

**FIREWORKS,**

- schedule of compensation under Washington act, 124.

**FIRST AID,**

- compensation under Illinois act, 326.

**FIRST AID FUND,**

- proposed amendment to Washington act, 126.

**FIRST AID TREATMENT,**

- under Federal act, 381.

**FISCAL YEAR,**

- under German code, 1911, 601.

**FISHERMEN,**

- covered by German code, 1911, 598.

**FISHING VESSELS,**

- work on shares excluded from compensation acts, 434.

**FITS,**

- injury while undergoing epileptic fit, 460.

**FLOUR MILLS,**

- factories under Kansas act, 292.

**FOOT BALL PLAYERS,**

- whether covered by acts, 438.



*[References are to Sections.]*

**FORBIDDEN ACT,**

injury while doing excluded, 475.

**FOREIGN COUNTRIES,**

summary of compensation laws, 100-122.

**FOREMAN,**

not workmen where partner, 433.

**FORESTRY,**

employés of department protected by Federal act, 380.

**FORFEITURE,**

benefits under Montana act, 64.

insurance under Maryland act, 376a.

**FORMAL PROCEDURE,**

under California act, 266.

Federal act, 382.

Kansas act, 293.

Maryland act, 376b.

Massachusetts act, 309.

Michigan act, 358.

Ohio act, 185, 191, 198.

Rhode Island act, 369.

Washington act, 134.

Wisconsin act, 237.

**FORMS,**

accident experience under Ohio act, 178.

accident report of casualty company under Wisconsin act, 249.

admission of service under Wisconsin act, 252.

affidavit of claim of dependents under Washington act, 154.

affidavit of claim under Washington act, 153.

agreements and award under Kansas act, 292.

agreement for redeeming liability by payment of lump sum  
under Massachusetts act, 313.

agreement of final adjustment under Rhode Island act, 374.

agreement where payments continue under Rhode Island act,  
375.

agreement in regard to Massachusetts act, 317.

alphabetical list of industries with rates under Washington  
act, 140.

application for adjustment of claim under Wisconsin act, 248.

application and notices by employers under Ohio act, 176.

application for classification of industry and for premium un-  
der Ohio act, 177.

application for money to pay medical and hospital services  
with compensation under Ohio act, 186, 192, 199, 206.

[References are to Sections.]

**FORMS—Continued.**

- application for money paid for medical and funeral expenses under Ohio act, 216.
- application for review of claim before full board under Massachusetts act, 321.
- bond for appeal from award under Illinois act, 350.
- blanks to be furnished under Federal act, 381.
- burial expense voucher under Washington act, 162.
- certificate and oath of lay witness under Ohio act, 204.
- claim for death under Federal act, 394.
- certificate of disability under Federal act, 390.
- claims under Federal act, 384, 389.
- claim under Michigan act, 363.
- claim for compensation for insurance under Massachusetts act, 318.
- contractor's statement of wages, 134.
- certificate and oath of lay witness under Ohio act, 225.
- certificate and proof of death by lay witness under Ohio act, 219.
- certificate and oath of lay witness under Ohio act, 214.
- certificate by lay witness to prove death under Ohio act, 208.
- certificate and oath of lay witness under Ohio act, 197, 214.
- death under Federal act, 388.
- demand for first quarterly payment under Washington act, 138.
- demand for jury under Illinois act, 351.
- dependents' claim for compensation under Washington act, 152.
- druggists' costs under Ohio act, 188, 195, 202, 212, 223.
- duty of boards to formulate and furnish, 171, 227, 263, 355, 382.
- duty of insurance commissioner to formulate under Maryland act, 376a.
- duty of court to prescribe under Rhode Island act, 367.
- duty of employers to fill under Ohio act, 171.
- election of employer under Kansas act, 294.
- elective adoption of Washington act, 137.
- election to receive compensation under Washington act, 164, 165.
- employer's acceptance under California act, 268.
- employer's certificate and oath of lay witness under Ohio act, 190.
- employer's certificate and oath under Ohio act, 189, 193, 200, 210, 221.
- employer's first report of accident under California act, 271.
- employer's notice of election not to accept under Illinois act, 329.
- employer's notice of intention to discontinue compensation payments under Illinois act, 330.

[References are to Sections.]

**FORMS—Continued.**

- employer's notice of withdrawal under Wisconsin act, 239.
- employer's notice to Illinois employes of intention to discontinue compensation payments, 331.
- employer's notice of withdrawal under Michigan act, 360.
- employer's petition to make lump sum payment instead of instalment payments, 345.
- employer's petition for guardian or administrator, 346.
- employer's report of accident under Washington act, 143.
- employer's supplemental report of accident under California act, 272.
- employer's withdrawal under California act, 269.
- employer's written acceptance under Wisconsin act, 238.
- employe's notice of injury and claim under Illinois act, 334.
- employe's petition for lump sum payment under Illinois act, 342-343.
- final settlement voucher under Washington act, 163.
- first accident report of casualty company under California act, 286.
- first notice of injury under Ohio act, 183.
- first notice of death under Ohio act, 184.
- first report of accident under Michigan act, 364.
- first report of accident under Wisconsin act, 242.
- for employes under California act, 273.
- formulation by commissioner of labor under New Hampshire act, 296.
- furnished free under Ohio act, 171.
- hearings before California board, 276.
- immediate report of injury under Federal act, 386.
- in cases of death with dependents under Ohio act, 215-225.
- in cases of death without dependents under Ohio act, 205-214.
- instructions to counties and municipal corporations under Washington act, 141.
- instructions to injured workmen in Washington, 145.
- letter of instructions to employers and employes under Washington act, 142.
- medical fee bill and hospital charges under Ohio act, 196, 203, 213, 224.
- money to pay medical and funeral expenses under Ohio act, 205.
- monthly statement under Washington act, 139.
- monthly statement of city under Washington act, 135.
- notice assessing costs of proceedings before arbitrators under Massachusetts act, 322.
- notice by employe to employer for compensation under California act, 275.

[*References are to Sections.*]

**FORMS—Continued.**

- notice by employé of election to be subject to Wisconsin act, 245.
- notice by parent or guardian of claim of right under Rhode Island act, 372.
- notice by employé of his refusal to accept under Illinois act, 332.
- notice by employé of claim of common law right under Rhode Island act, 371.
- notice by employer to commission of compliance with Wisconsin act, 241.
- notice by employé of non-election, 274.
- notice of employer's acceptance under Rhode Island act, 370.
- notice of intention to file petition for lump sum payment under Illinois act, 336.
- notice of election by Michigan employé, 361, 362.
- notice of right under Federal act, 396.
- notice of waiver of rights of common law under Massachusetts act, 312.
- notice of assessment under Washington act, 136.
- notice of claim of common law rights under Massachusetts act, 311.
- notice of hearing of application for adjustment of claim, 278.
- notice of hearing under Wisconsin act, 250.
- notice of employer to employe under Ohio act, 179.
- notice of hearing of application for adjustment of claim, 278.
- notice of hearing under Wisconsin act, 250.
- notice of employer to employé under Ohio act, 179.
- notice of insurance under Massachusetts act, 319.
- notice of right to compensation under Federal act, 383.
- notice of injury under Massachusetts act, 319.
- notice of filing of application for adjustment of claim, 277.
- notice of entry of findings and award under Wisconsin act, 253.
- notice of employé of non-election under Wisconsin act, 246.
- notice that employer has accepted California act, 270.
- notice that employer has ceased to be a subscriber under Massachusetts act, 314.
- notice that employé elects to become subject to Wisconsin act, 240.
- notice to be posted under Washington act, 131.
- notice to employer of claim for injury under Wisconsin act, 247.
- notice to employer of injury under New Jersey act, 255.
- notice to employé under Massachusetts act, 310.

[References are to Sections.]

**FORMS—Continued.**

- notice to employé's refusing examination under Massachusetts act, 316.
- notice to employer of accident causing death under Illinois act, 335.
- notice to Massachusetts board that injured employé has refused to submit to examination, 315.
- notice to employé's of acceptance of Michigan act, 357.
- notice to doctor to file report under California act, 284.
- official safety bulletin of Washington, 166.
- partial payment voucher under Washington act, 158, 159.
- pension voucher under Washington act, 160, 161.
- petition by administrator for lump sum payment under Illinois act, 344.
- petition for appeal from award under Illinois act, 349.
- petition for appointment of neutral physician under Illinois act, 352.
- petition for review of agreement under award under Illinois act, 353.
- petition for third arbitrator under Illinois act, 347.
- petition under Rhode Island act, 374b.
- physician's certificate and proof of death under Ohio act, 209, 220.
- physician's fee bill under Ohio act, 187, 194, 201, 211, 222.
- physician's report of accident under California act, 281.
- prescribed by New Jersey act, 260, 261.
- procedure for procuring medical and hospital services without compensation under Ohio act, 185.
- procedure on notices under Ohio act, 182.
- procedure to obtain compensation in case of permanent total disability under Ohio act, 198.
- procedure to obtain compensation and money to pay medical and funeral expenses under Ohio act, 215.
- procedure to obtain money for medical and hospital services under Ohio act, 191.
- proof of death by undertaker under Washington act, 151.
- proof of death by physician under Washington act, 150.
- proof of dependents under Ohio act, 217.
- receipt on account of compensation, 323.
- report of actual pay roll under Washington act, 134.
- report of arbitrator under Illinois act, 348.
- report of attending surgeon in Washington, 146.
- report of committee on arbitration under Massachusetts act, 320.
- report of discontinuance of payment under Federal act, 392.
- report of fatal accident under Illinois act, 337.

[References are to Sections.]

**FORMS**—*Continued.*

- report of medical and surgical examinations under Illinois act, 341.
- report of non-fatal accident under Illinois act, 339.
- report of termination of disability under Federal act, 387.
- report of witnesses under Washington act, 148.
- request for fuller report of accident, 283.
- request for medical examination under Federal act, 391.
- request for report of accident under California act, 282.
- review of operation of Washington act, 166.
- settlement receipt under Massachusetts act, 324.
- special report of surgeon under Washington act, 149.
- statement of compensation to be posted under Illinois act, 333.
- statistical reports on operation of Washington act, 165.
- subpoena under California act, 279.
- subpoena under Wisconsin act, 251.
- summary and award under Washington act, 157.
- supplemental accident report of casualty company, 287.
- supplementary report of accident under Michigan act, 365.
- supplementary report of accident under Wisconsin act, 243.
- supplementary report of fatal accident under Illinois act, 338.
- supplementary report of non-fatal accident after recovery under Illinois act, 340.
- supplementary report under Ohio act, 178.
- surgical report under Washington act, 147.
- undertaker's certificate of death and cost bill under Ohio act, 207, 218.
- used by casualty companies under California act, 285.
- used by employers under California act, 267.
- used by physicians under California act, 280.
- where disability temporary partial, temporary total, and permanent partial under Ohio act, 191-197.
- where employé not incapacitated to exceed seven days under Ohio act, 185-190.
- workman's claim for compensation under Washington act, 144.
- written acceptance of Michigan act, 359.

**FORTS,**

- employés protected by Federal act, 378.

**FOUNDRIES,**

- employments covered by New Hampshire act, 296.
- factory under Kansas act, 292.
- hazardous employment under Washington act, 124.

**FRACTURE,**

- skull a total disability under Illinois act, 326.

*[References are to Sections.]***FRANCE,**

schedule, 107.

**FRAUD,**

agreement between employé and employer under Illinois act, 326.

as ground for setting aside under Kansas act, 292.

effect of compromise of claim, 516.

effect on release, 546.

ground of review of findings of Wisconsin commission, 227.

ground for setting aside release under Kansas act, 292.

misrepresentation of workman at time of entering employment under British act, 577.

vitiates award under California act, 263.

**FRAUDULENT CLAIMS,**

under Montana act, 64.

**FREDERICK THE GREAT,**

influence on laws, 15.

**FROST BITES,**

whether injury accidental, 449.

**FUNDAMENTAL LAWS,**

German insurance, 582.

**FUNDS,**

distribution of funds on repeal of Washington act, 124.

**FULLERTON,**

decision upholding Washington act, 127.

**FUNERAL BENEFITS,**

under German code 1911, 597.

**FUNERAL EXPENSES,**

application for money to pay under Ohio act, 205, 206, 216.

burial expense vouchers under Washington act, 162.

burial money under German law, 581.

procedure to obtain compensation and money to pay under Ohio act, 215.

under British act, 577.

Arizona act, 375a.

Kansas act, 292.

Maryland act, 376a.

Massachusetts act, 303.

Michigan act, 355.

Nevada act, 290.

New Hampshire act, 296.

[References are to Sections.]

**FUNERAL EXPENSES—Continued.**

- New Jersey act, 255.
- Ohio act, 171.
- Rhode Island act, 367.
- under various American acts, 412.
- voucher under Washington act, 162.

**G**

**GARNISHMENT,**

- claim not subject to levy in Illinois, 326.
- Michigan, 355.

**GAS,**

- employment in gas plant covered by Kansas act, 292.
- covered by Illinois act, 326.
- whether injury from inhalation an accident, 455.

**GAS WORKS,**

- classification under Washington act, 124.
- hazardous employment under Washington act, 124.

**GERMANY,**

- analysis of laws by Dr. Laband, 68.
- analysis of statistics, 46.
- basis of compulsory insurance, 27.
- characteristics of insurance legislation, 19.
- classification of causes of accidents, 47.
- conditions which induced consideration of subject, 20.
- historical review of German plan of insurance, 15-17.
- industrial insurance acts, 17.
- influence of Fichte and Hegel, 21.
- insurance laws prior to 1911, 579-593.
- introduction to code of 1911, 595.
- miners societies, 31.
- mother of state insurance, 26.
- pioneer influence on subject, 8.
- relation of insurance law to socialism, 29.
- schedule, 108.
- sick insurance prior to 1911, 580, 581.
- statistics of fault in cases of accidents, 36.
- statistics of causes of accidents, 46.
- statistical experience of compulsory insurance laws, 35.
- views of Schaeffle on compulsory insurance, 24.
- views of Sismondi, 22.
- views of Wagner on insurance laws, 25.
- views of Winkelblech on insurance laws, 23.

**GERMAN CODE 1911,**

- accident insurance, 598, 601.
- analysis, 600.



[References are to Sections.]

GERMAN CODE 1911—*Continued.*

- benefits, 601.
- carriers of imperial insurance, 601.
- fees and stamp taxes, 601.
- general features, 596.
- introduction, 595.
- invalidity and survivors' insurance, 599.
- legal assistance, 601.
- local wage rate, 601.
- medical treatment, 601.
- notifications, 601.
- place of employment, 601.
- prohibitions and penalties, 601.
- scope of imperial insurance, 601.
- sick insurance, 597, 601.
- time limits, 601.

GLASS WORKERS DISEASES,

- under British act, 577.

GOVERNMENT EMPLOYEES,

- applicability of Wisconsin act, 227.
- Federal compensation act, 377-399.
- compensation under Belgian schedule, 102.
  - Austrian schedule, 101.
  - British Columbia schedule, 103.
  - British schedule, 109.
  - California act, 263.
  - Cape of Good Hope schedule, 104.
  - Danish schedule, 105.
  - Finland schedule, 106.
  - French schedule, 107.
  - German schedule, 108.
  - Greek schedule, 110.
  - Hungarian schedule, 111.
  - Italian schedule, 112.
  - Luxemburg schedule, 113.
  - Michigan act, 355.
  - Netherlands schedule, 114.
  - New Zealand schedule, 115.
  - Norwegian schedule, 116.
  - Russian schedule, 118.
  - South Australian schedules, 119.
  - Spanish schedule, 121.
  - Swedish schedule, 120.
  - West Australian schedule, 122.

[References are to Sections.]

**GRATUITIES,**

consideration in determining weekly earnings, 528.

**GRADE OF EMPLOYMENT,**

used to determine amount of weekly earnings, 526.

**GRADUAL PARALYSIS,**

whether accidental, 459.

**GRANDCHILDREN,**

dependents under British act, 577.

Kansas act, 292.

Nevada act, 290.

New Jersey act, 255.

**GRANDPARENTS,**

dependents under British act, 577.

Kansas act, 292.

New Jersey act, 255.

**GREAT BRITAIN,**

See **BRITISH COMPENSATION ACT.**

compensation legislation, 18.

enactment of compensation act, 8.

schedules, 109.

**GREECE,**

schedule, 110.

**GROSS NEGLIGENCE,**

employer under California act, 263.

Kansas act, 292.

**GUARDIAN,**

employé mentally incompetent under Massachusetts act, 303.

for incompetent under Illinois act, 326.

minors and incompetent under Kansas act, 292.

Arizona act, 375a.

Michigan act, 355.

New Hampshire act, 296.

notice of claim of common law right under Rhode Island act,  
372.

petition for appointment under Illinois act, 346.

**GUARDIAN AD LITEM,**

for incompetent dependents, 552.

under Rhode Island act, 367.

**GUILDS,**

influence on insurance idea, 30.

[References are to Sections.]

**GUILDS' SICK CLUB,**

under German laws prior to 1911, 581.

**GUILD SICK FUNDS,**

under German code 1911, 601.

**H**

**HALL,**

argument for constitutionality of under New York act, 58.

**HANDS,**

compensation for loss or injury under Illinois act, 326.

Maryland act, 376a.

Massachusetts act, 303.

Michigan act, 355.

Nevada act, 290.

New Jersey act, 255.

Rhode Island act, 367.

loss permanent disability under Illinois act, 326.

**HARRIS,**

translator of German code of 1911, 595.

**HAZARDOUS OCCUPATIONS,**

See **EXTRA HAZARDOUS OCCUPATIONS.**

covered by Illinois act, 326.

New York act, 56.

future enumeration under Washington act, 124.

under Illinois act, 326.

Arizona act, 375a.

Kansas act, 292.

Nevada act, 290.

New Hampshire act, 296.

**HEARING,**

See **TRIAL; ARBITRATION; EVIDENCE.**

arbitration under Kansas act, 292.

by courts under New Jersey act, 255.

compensation dispute under Massachusetts act, 303.

continuances under Ohio act, 174.

duty of California Board to fix time, 263.

employment of stenographer under California act, 265.

exceptions under California act, 265.

forms under California act, 276.

"hearing docket" under Ohio act, 174.

notice of filing application for adjustment under California act,  
277, 278.

notice under Wisconsin statute, 227, 250.

procedure before Ohio Board, 171.

right to make award terminate at fixed date, 565.

[References are to Sections.]

**HEARING**—*Continued.*

- submission to medical referee, 562.
- subpoena of witnesses under California act, 279.
- testimony under Ohio act, 174.
- use of depositions under California act, 265.
- use of depositions under Ohio act, 174.
- under Nevada act, 290.

**HEART,**

- whether disease accidental, 457.

**HEAT,**

- whether injury accidental, 449.

**HEAT STROKE,**

- whether injury accidental, 449.

**HEGEL,**

- influence on insurance laws, 21.

**HELPER,**

- deduction of sums paid helper, 529.

**HENDERSON,**

- description of German insurance system, 28.

**HERNIA,**

- proof to entitle workman to compensation under Washington act, 124.

**HISTORICAL REVIEW,**

- development of insurance and compensation laws, 7-14.

**HOISTING APPARATUS,**

- covered by Nevada act, 290.
- New Hampshire act,

**HOLIDAYS,**

- deduction in calculation of weekly earnings, 527.

**HOLLAND,**

- schedule, 114.

**HOME WORKING INDUSTRIES,**

- covered by German code 1911, 601.

**HONORARY OFFICES,**

- under German code, 1911, 601.

**HOSPITALS,**

- right to admittance under German law, 581.

*[References are to Sections.]***HOSPITAL CHARGES,**

- application for money to pay under Ohio act, 205, 206.
- fee bill under Ohio act, 196.
- deduction under British act, 535.
- under Ohio act, 203, 213, 224.
- procedure to obtain compensation and money to pay under Ohio act, 215.

**HOSPITAL SERVICES,**

- application for money to pay under Ohio act, 186, 192, 199, 216.
- compensation under Illinois act, 326.
  - Massachusetts act, 303.
  - Michigan act, 355.
- during waiting period under New Jersey act, 255.
- formal procedure for procuring under Ohio act, 185.
- formal proceedings to obtain money to pay under Ohio act, 191.
- furnished by employer under Rhode Island act, 367.
- payment from Ohio insurance fund, 171.

**HOSPITAL TREATMENT,**

- allowance under German code 1911, 597.
- authority of Washington board to supervise, 124.

**HOUSE MOVING,**

- classification under Washington act, 124.

**HUNGARY,**

- schedule, 111.

**HUSBAND AND WIFE,**

- dependents under British act, 577.
  - California act, 263.
  - Illinois act, 326.
  - Kansas act, 292.
  - Massachusetts act, 303.
  - Michigan act, 355.
  - Nevada act, 290.
  - New Hampshire act, 296.
  - Rhode Island act, 367.
  - Wisconsin act, 227.

**1****ICE CUTTING,**

- protected by German code 1911, 598.

**IGNORANCE,**

- not an excuse for failure to give notice, 553.

**ILLEGITIMATES,**

- dependents, 503, 577.
  - amount of compensation, 544.

*[References are to Sections.]*

**ILLINOIS,**

administration and procedure under act, 326, 327.  
creation of State bureau of labor statistics, 326.  
enactment of compensation law, 5.  
forms used in administration of act, 328-353.  
members of employers' liability commission, 9.  
nature and scope of act, 325.  
recommendations of commission, 8.  
scale of compensation, 326.  
statistics of commission, 40.  
text of compensation law, 326.  
work of commission, 12.

**IMBECILITY,**

See **INCOMPETENTS.**

injury resulting in a permanent disability, under Illinois act, 326.

**IMPERIAL INSURANCE OFFICE,**

administration under German insurance laws, 596, 601.

**IMPLIED CONTRACTS,**

hiring under New Jersey act, 255.

**INCAPACITY,**

See **PARTIAL INCAPACITY; TOTAL INCAPACITY.**

certificate of termination, 545.  
compensation under Massachusetts act, 303.  
compensation under Michigan act, 355.  
compensation under New Hampshire act, 296.  
effect on award of increase or diminution under Illinois act, 326.  
effect under Federal act, 378.  
loss of arm permanent, 517.  
nervousness, 452.

**INCOMPETENT,**

See **IMBECILITY; INSANITY.**

appointment of conservator and guardian under Illinois act, 326.

Arizona act, 375a.

Kansas act, 292.

Massachusetts act, 303.

Michigan act, 355.

New Hampshire act, 296.

ground for setting aside release under Kansas act, 292.

guardian ad litem for dependent, 552.

mentally defective dependents under Rhode Island act, 367.

suicide, 471.

workmen under New York act, 56.

*[References are to Sections.]*

**INCREASE,**

effect of increase in earnings after injury, 540.

**INDEMNITY,**

See SUBROGATION.

injury to employe by third person, 462.

under British act, 513.

**INDEPENDENT CONTRACTOR,**

liability under British act, 577.

liability under Illinois act, 326.

Kansas act, 292.

Massachusetts act, 303.

Nevada act, 290.

New Jersey act, 255.

Ohio act, 171.

not included in term "workman," 444.

**INDUSTRIAL ACCIDENTS,**

See ACCIDENTS.

definition under German code 1911, 598.

**INDUSTRIAL ACCIDENT BOARD,**

California, 263.

membership under Massachusetts act, 303.

**INDUSTRIAL ACCIDENT INSURANCE,**

under German code 1911, 601.

**INDUSTRIAL COMMISSION,**

Wisconsin, 227.

**INDUSTRIAL SICK CLUBS,**

under German law prior to 1911, 581.

**INDUSTRIES,**

covered by Austrian schedule, 101.

Belgian schedule, 102.

British Columbia schedule, 103.

British schedule, 109.

Cape of Good Hope schedule, 104.

Danish schedule, 105.

Finland schedule, 106.

French schedule, 107.

German schedule, 108.

German code 1911, 598.

Greek schedule, 110.

Hungarian schedule, 111.

Italian schedule, 112.

Luxemburg schedule, 113.

[References are to Sections.]

INDUSTRIES—*Continued.*

Netherlands schedule, 114.  
New York act, 56.  
New Zealand schedule, 115.  
Norwegian schedule, 116.  
Russian schedule, 118.  
South Australian schedule, 119.  
Spanish schedule, 121.  
Swedish schedule, 120.  
Washington act, 140.  
West Australia schedule, 122.

INEBRIATES,

See INTOXICATION.

analogy of whisky cure cases to compensation acts, 81.

INEVITABLE RISKS,

statistics, 36.

INFANTS,

appointment of guardian or next friend under Massachusetts act, 303.

Michigan act, 355.

Rhode Island act, 367.

consideration of probable earnings, 541.

misrepresentation as to age, 469.

minors included in California act, 263.

status under Rhode Island act, 367.

Washington act, 124.

waiver of common law rights under Rhode Island act, 367.

INFERENCES,

that injury is a result of accident, 447.

INFORMATION,

duty of employers to furnish, 171, 264.

INHALATION,

injury from inhalation of gas, 455.

INHERENT RISKS,

employment under British act, 573.

INJURIES,

See ACCIDENTS; DISABILITY; OCCUPATIONAL DISEASES.

compensation under Austrian schedules, 100.

Belgian schedule, 102.

British schedule, 109.

British Columbia schedule, 103.



[References are to Sections.]

**INJURIES**—*Continued.*

- Cape of Good Hope schedule, 104.
- Denmark schedule, 104.
- Finland schedule, 106.
- French schedule, 107.
- German schedule, 108.
- Greek schedule, 110.
- Hungarian schedule, 111.
- Italian schedule, 112.
- Luxemburg schedule, 113.
- Netherland schedule, 114.
- New Zealand schedule, 115.
- Norwegian schedule, 116.
- Queensland schedule, 117.
- Russian schedule, 118.
- South Australian schedule, 119.
- Spanish schedule, 121.
- Swedish schedule, 120.
- various American acts, 409.
- West Australian schedule, 122.
- defined under Federal act, 397, 398.
- Washington act, 124.
- duty of Ohio board to prepare and furnish blanks for proof, 171.
- first notice under Ohio act, 183.
- notice under Illinois act, 334.
  - Massachusetts act, 311.
  - Michigan act, 355.
  - Rhode Island act, 367.
  - various American acts, 410.
- reports under Federal act, 381, 386.
- various American acts, 411.

**INSANITY,**

See **INCOMPETENTS.**

- total disability under Illinois act, 326.
- suicide, 471.

**INSOLVENCY,**

- employer under Illinois act, 326.
- preference of claims, 355.

**INSPECTION,**

- authority of Ohio board to employ inspectors, 171.
- employer's books under Washington act, 124.
- Ohio workshop and factory act, 171, 173.

[*References are to Sections.*]

**INSTITUTES,**

- accident insurance under German code 1911, 601.
- navigation accident insurance under German code 1911, 601.

**INSTRUCTIONS,**

- effect of disregard under Federal act, 381.
- letters to employers, 142, 356.
- to cities, towns, counties and other municipal corporations, under Washington act, 141.
- to injured workman under Washington act, 145.

**INSURANCE,**

See ACCIDENT INSURANCE; CASUALTY INSURANCE COMPANIES; EMPLOYEES' INSURANCE ASSOCIATION; COMPULSORY INSURANCE; LIABILITY INSURANCE.

- accident insurance under German code 1911, 598, 601.
- administration by commissioner under Michigan act, 355.
- advances from state to Massachusetts associations, 306.
- agreements between insurer and employe under Massachusetts act, 308.
- Michigan act, 355.
- analysis of German insurance legislation by Laband, 68.
- analysis of German statistics, 46.
- application for premium under Ohio act, 177.
- argument for joint contribution by employer and employé to fund, 53.
- basis of compulsory insurance, 27.
- building trades accident insurance laws in Germany, 590.
- carriers of German imperial insurance, 601.
- characteristics of German insurance legislation, 19.
- compulsory payment by employés under Illinois act, 326.
- contracts subject to California act, 263.
- contracts under Michigan act, 355.
- contributions to fund under Maryland act, 376a.
- creation under Washington act, 124.
- deposit of funds for insurance under Maryland act, 376a.
- description of German system, 28.
- development of idea from early guilds, 30.
- distinguishing characteristics of workman's insurance laws, 6.
- duty of Kansas superintendent to make rules to carry out statute, 292.
- duty of Ohio board to fix premium rates, 171.
- duties of Maryland insurance commissioner, 376a.
- economic basis of compulsory insurance, 33-53.
- effect of California act on liability insurance companies, 263.
- effect of insolvency of company under British act, 577.
- effect of insurance against liability under Kansas act, 292.
- ethical basis of system, 32.

[References are to Sections.]

**INSURANCE—Continued.**

- extent under German law prior to 1911, 581.
- German industrial insurance acts, 17.
- German miners' societies, 31.
- German plan of insurance as remedy, 51.
- German marine accident insurance laws, 591.
- historical review of German plan, 15-17.
- how fund raised under Montana act, 64.
- information required under Kansas act, 292.
- insurance of compensation to employ es in Massachusetts, 305.
- invalid and old age insurance under German laws prior to 1911, 593.
- invalid and survivors' insurance under German code 1911, 599, 601.
- investment of Ohio fund, 171.
- laws an exercise of taxing power, 83-91.
- laws a proper exercise of police power, 93.
- liability insurance statistics in Ohio, 45.
- limitations on power of legislature, 95.
- meaning of term "accident" in policies, 446.
- message of Emperor William I, 16.
- mutual companies in liability business in Massachusetts, 304.
- nature and remedial provision of insurance law, 66.
- nature of administration of compensation acts, 97.
- nature of obligation imposed, 67.
- nature of Ohio act, 167.
- navigation accident insurance under German code, 1911, 601.
- necessity of approval of liability of company under California act, 263.
- necessity for certificate of company under Kansas act, 292.
- notice of change of insurer under Massachusetts act, 308.
- object under German law prior to 1911, 583.
- Ohio act compulsory act, 169.
- Ohio act an insurance act, 168.
- Ohio treasurer custodian of fund, 171.
- origin and development of plan in Germany, 20-32.
- personal liability of employer under German laws prior to 1911, 588.
- principles affecting new insurance of small enterprises in Germany, 592.
- problem of industrial insurance, 75.
- provision in Austrian schedule, 101.
- provisions in Wisconsin act, 227.
- public purpose under tax power, 87.
- relation between employer and employ e, 70.

[References are to Sections.]

INSURANCE—*Continued.*

- relation of carriers to each other and to other bodies under German code 1911, 601.
- relation of industrial insurance to socialism, 29.
- relief department not affected by Illinois act, 326.
- reports of accident by Massachusetts association, 308.
- report of accident to commissioner of labor, 261.
- right of workman against liability insurance company, 549.
- right to consider insurance of employé under various acts, 303, 355, 367.
- Schaeffle, father of compulsory insurance, 24.
- scope of German imperial insurance, 601.
- sick insurance under German code, 580, 597, 601.
- sources of fund for old age and invalid insurance under German law prior to 1911, 593.
- stamp payment under German code 1911, 599.
- statistical experience, 35, 37.
- statistics of fault as cause of accident, 36.
- study of subject in United States, 8.
- theory of State obligation, 68.
- under British Columbia schedule, 103.
  - British schedule, 109.
  - Cape of Good Hope law, 104.
  - Danish schedule, 105.
  - Finland schedule, 106.
  - French schedule, 107.
  - German schedule, 108, 601.
  - Hungarian schedule, 111.
  - Italian schedule, 112.
  - Luxemburg schedule, 113.
  - Michigan act, 355.
  - Montana act, 64.
  - Netherland schedule, 114.
  - New Zealand schedule, 115.
  - Norwegian schedule, 116.
  - Queensland schedule, 117.
  - Russian schedule, 118.
  - South Australian schedule, 119.
  - Spanish schedule, 121.
  - Swedish schedule, 120.
  - Washington act, 123-166.
  - West Australian schedule, 122.
- validity of laws as to employé, 72.
  - as to employer, 71.
  - as to States, 74.
- views of Wagner, 25.

## [References are to Sections.]

**INSURANCE—Continued.**

- voluntaries permitted under German code 1911, 597, 601.
- voluntary insurance under Maryland act, 376a.
- voluntary supplementary insurance under German code 1911, 599.
- whether act may be optional, 99.
- whether administration executive or judicial, 97.
- whether laws lack uniformity and equality, 94.

**INTENTIONAL MISCONDUCT,**

- See CONTRIBUTORY NEGLIGENCE; WILFUL MISCONDUCT.
- effect under various American acts, 124, 421.

**INTERSTATE COMMERCE,**

- application under various acts, 124, 289, 292, 355.

**INTERURBAN RAILROADS,**

- hazardous employment under Washington act, 124.
- included in railways under Kansas act, 292.

**INTOXICATION,**

- effect under various American acts, 255, 296, 421, 468.

**INVALID,**

- defined in Washington act, 124.

**INVALIDITY INSURANCE,**

- under German code, 593, 599, 601.
- waiting time under German code 1911, 601.

**INVALIDITY AND SURVIVORS' INSURANCE,**

- procedure under German code 1911, 601.
- under German code 1911, 601.
- payment of benefits, 601.
- relation to sick insurance, 601.

**INVALIDITY PENSIONS,**

- under German laws, 593, 601.

**INVESTIGATION,**

- accidents under German code 1911, 601.
- authority of Washington board to investigate causes of injuries, 124.

**INVESTMENT,**

- compensation under British act, 577.
- Ohio treasurer fund, 171.
- sums paid on death claim under British act, 574.

**IRELAND,**

- application of British act to Ireland, 577.

*[References are to Sections.]*

**ISTHMIAN CANAL,**

employés benefited by Federal act, 379.

**ITALY,**

schedule, 112.

**ITINERANT TRADES,**

beneficiaries of sick insurance under German codes 1911, 601.

**IVES v. SOUTH BUFFALO RAILROAD CO.**

decision, 57.

**JOHN GRAHAM BROOKS,**

description of guilds, 30.

editor of Fourth special report, 8.

**JOHNSON,**

decision sustaining constitutionality of Ohio law, 172.

**JOINDER,**

parties under California act, 265.

**JOINT ADVENTURES,**

British act not applicable, 577.

sailing vessels, 434.

**JOINT CONTRIBUTION,**

by employer and employé to compensation fund, 53.

**JUDGMENTS,**

See APPEALS; AWARDS; FINDINGS.

certified copy filed under California act, 263.

conclusiveness under California act, 263.

under Nevada act, 290.

Wisconsin statutes, 227.

determination of benefit under German code 1911, 601.

filing under Wisconsin act, 227.

findings and awards by Wisconsin commission, 227.

for compensation under New Hampshire act, 296.

on award under Kansas act, 292.

review under California act, 263.

upon agreement of award under Kansas act, 292.

under Rhode Island act, 367.

**JUDICIAL POWERS,**

administrative officers, 61.

invasion under Wisconsin act, 228.

whether compensation laws infringe, 76.

*[References are to Sections.]***JURISDICTION,**

- actions under Rhode Island act, 367.
- appeals under Ohio act, 171.
- courts in Nevada on failure of arbitration, 290.
- courts under Kansas act, 292.
- Rhode Island act, 367.
- enforcement of laws in federal courts, 465.
- excess as ground of review of findings of Wisconsin commission, 227.
- Industrial Commission of Wisconsin, 228.
- Michigan industrial accident board, 355.
- Ohio Board, 171.
- registrar of agreements between parties, 548.
- relief under Wisconsin act, 235.
- to enforce arbitration award under Kansas act, 292.
- to recover compensation under New Hampshire act, 296.

**JURY,**

- demand on appeal under Illinois act, 351.
- deprivation of right to trial, 61, 96, 98, 124, 127.
- waiver of jury trial under Kansas act, 292.

**KANSAS,**

- enactment of compensation law, 5.
- form of election by employer, 294.
- formal procedure under compensation act, 293.
- nature and scope of compensation act, 291.
- text of compensation act, 292.
- work of commission, 12.

**L****LABAND,**

- analysis of German insurance legislation, 68.

**LAPSE OF TIME,**

- presumption of death, 507.

**LASSALLE,**

- influence on German legislation, 21.

**LAST SICKNESS,**

- expenses under Massachusetts act, 303.
- under Michigan act, 355.
- Rhode Island act, 367.

**LAUNDRIES,**

- classification under Washington act, 124.

**LAW WRITER,**

- workman under British act, 432.

*[References are to Sections.]*

**LAY WITNESS,**

certificate and oath under Ohio act, 190, 204, 208, 225.

**LEAD POISONING,**

occupational disease under British act, 577.  
whether an accident, 453.

**LECTURER,**

not workman under British act, 432.

**LEG,**

compensation for loss under Michigan act, 355.  
under New Jersey act, 255.

**LEGAL ASSISTANCE,**

under German code, 1911.

**LEGAL RELATION,**

when that of employer and workman exists, 511.

**LEGISLATURE,**

power to abrogate common law defenses, 71.  
power to determine public purpose of tax, 88.

**LETTERS,**

instructions to Michigan employers, 356.  
Wisconsin employers, 236.

**LETTERS OF ADMINISTRATION,**

not necessary in cases of dependency, 509.  
upon estate of employer, 551.

**LIABILITY COMMISSION,**

creation under New Jersey act, 257.

**LIABILITY INSURANCE,**

business engaged in by mutual companies, 304.  
companies under Massachusetts act, 303.  
comparison of rates with premium rates under Ohio law, 180.  
reports of accident under Massachusetts act, 308.  
right of workman against company under British act, 549.  
statistics in Ohio, 45.  
under Michigan act, 355.

**LIABILITY LAWS,**

characteristics, 3.  
modern conception, 4.  
statistics of operation, 49.

**LICENSE,**

to employes' insurance association under Massachusetts act,  
303.



[References are to Sections.]

**LIENS,**

- attorney's under Kansas act, 292.
- Illinois act, 326.
- New York act, 56.
- in cases of insolvency under Michigan act, 355.
- on awards under Wisconsin act, 227.

**LIFE,**

- attempt to save life an act in course of employment, 484.

**LIGHTNING,**

- whether injury accidental, 449.

**LIGHT WORK,**

- reduction of compensation because of ability to perform, 532.

**LIME BURNING PLANT,**

- factory under Kansas act, 292.

**LIMITATIONS,**

- on right to enact laws, 67.
- taxing power, 83.

**LIMITATION OF ACTIONS,**

- application to workmen mentally incompetent under New Hampshire act, 296.
- claim must be filed within six months in Illinois, 326.
- commencement of proceedings under Michigan act, 355.
- filing claim under Federal act, 378.
- statute saved in Washington act, 124.
- time for filing claims under British act, 577.
- under Kansas act, 292.
- under New Hampshire act, 296.
- under Rhode Island act, 367.
- under Washington act, 124.

**LIVERY STABLES,**

- employés protected by German code 1911, 598.

**LLOYD-GEORGE,**

- insurance law, 8, 578.

**LOAN,**

- employés, 441.

**LOCAL SICK CLUBS,**

- under German law prior to 1911, 581.
- under German code 1911, 601.

**LOCKJAW,**

- whether injury received in course of employment, 478.

[*References are to Sections.*]

**LOCOMOTIVES,**

construction covered by Nevada act, 290.

**LOGGING,**

hazardous employment under Washington act, 124.

**LONGSHOREMAN,**

compensation under Washington act, 124.

**LOSS OF SIGHT,**

as total or partial disability, 326, 367, 520.

compensation under Michigan act, 355.

injury accidental, 456.

nature of disability, 520.

**LUMP SUM PAYMENT,**

agreement for redemption under Massachusetts act, 313.

employer's petition under Illinois act, 342-343.

judgment under Kansas act, 292.

notice of intention to file petition under Illinois act, 336.

petition by administrator under Illinois act, 344.

redemption of weekly payments under British act, 517.  
under British act, 577.

Arizona act, 375a.

Illinois act, 326.

Kansas act, 292.

Massachusetts act, 303.

Michigan act, 355.

Montana statute, 64.

New Hampshire act, 296.

New Jersey act, 255.

Ohio act, 171, 174.

Rhode Island act, 367.

Washington act, 124.

**LUNCH HOUR,**

whether injury received in course of employment, 481.

**LUXEMBURG,**

schedule, 113.

**M****MACHINE SHOPS,**

factories under Kansas act, 292.

hazardous employment under Washington act, 124.

meddling with machinery whether wilful misconduct, 467.

**MALICIOUS ACTS,**

right to compensation under British act, 573.

**MALICIOUS INJURY,**

not within scope of employment, 492.

[*References are to Sections.*]

**MANAGER,**

- defined in British act, 577.
- not workman under British act, 432.

**MANUAL LABOR,**

- as essential to right to compensation under British act, 432.

**MARINE INSURANCE,**

- under German laws prior to 1911, 591.

**MARSHALL,**

- concurring opinion sustaining Wisconsin act, 228.

**MARYLAND,**

- nature and scope of act, 376.
- text of act, 376a.
- voluntary character of act, 376a.
- supervisory authority of insurance commissioner, 376a.

**MASSACHUSETTS,**

- decision sustaining constitutionality of act, 307.
- enactment of insurance law, 6.
- formal procedure, 309.
- forms for administration of act, 309-324.
- list of forms, 309.
- members of commission, 9.
- nature and scope of act, 302.
- rules of industrial accident board, 308.
- text of act relative to insurance of compensation under Massachusetts act, 305.
- text of compensation act, 303.
- text of act authorizing advances to insurance associations, 306.
- text of act authorizing mutual insurance company to do liability business, 304.
- work of commission, 12.

**MASTER AND SERVANT,**

- See EMPLOYER; EMPLOYEE.
- common law duties for protection of servant, 1.

**MATERNITY BENEFITS,**

- under German code 1911, 597, 601.

**MEDICAL ATTENDANCE,**

- application for money to pay under Ohio act, 186, 192, 199, 205, 206, 216.
- application for settlement of controversy, 265.
- authority of Washington board to supervise treatment, 124.
- charges under Ohio act, 224.
- compensation under British act, 577.

[References are to Sections.]

**MEDICAL ATTENDANCE—Continued.**

- under California act, 263.
- under German laws prior to 1911, 581.
- under German code 1911, 601.
- under Illinois act, 326.
- under Kansas act, 292.
- under Maryland act, 376a.
- under Massachusetts act, 303.
- under Michigan act, 355.
- under New Hampshire act, 296.
- under Wisconsin act, 227.
- under various American acts, 417.
- deduction of expenses under Illinois act, 326.
- duty of Ohio board to prepare and furnish blank forms, 171.
- expenses during waiting period under New Jersey act, 255.
- fee bill under Ohio act, 203.
- formal procedure to obtain money to pay under Ohio act, 185, 191.
- furnished by employer under Rhode Island act, 367.
- medical fee bill under Ohio act, 196.
- provisions in foreign schedule, 100-122.
- whether defective treatment is an accident, 464.

**MEDICAL EXAMINATION,**

See **PHYSICIANS.**

- appointment of physician under Rhode Island act, 367.
- by neutral physician under Kansas act, 292.
- by physician of department of commerce and labor under Federal act, 381.
- certificate of physician under Kansas act, 292.
- demand of workman for presence of personal physician, 556.
- demand that it take place in attorney's office, 557.
- effect of refusal to submit under Federal act, 378.
  - under Arizona act, 375a.
  - under Illinois act, 326.
  - under Kansas act, 292.
  - under Michigan act, 355.
  - under New Hampshire act, 296.
- expense under California act, 263.
- notice of refusal to submit under Massachusetts act, 315.
- place of making under Federal act, 381.
- records under Federal act, 381.
- report of attending physician under Washington act, 146, 147.
- requirement under British act, 577.
  - under Arizona act, 375a.
  - under California act, 263.

*[References are to Sections.]***MEDICAL EXAMINATION—Continued.**

- under Federal act, 378, 381.
- under Illinois act, 326.
- under Kansas act, 292.
- under Massachusetts act, 303.
- under Michigan act, 355.
- under Montana act, 64.
- under Nevada act, 290.
- under New Hampshire act, 296.
- under New Jersey act, 255.
- under New York act, 56.
- under Rhode Island act, 367.
- under various American acts, 424.
- under Washington act, 124, 130.
- under Wisconsin statute, 227.
- right of employé to have his physician present, 255, 326, 367, 381.
- special under Federal act, 381.
- subsequent examination under Federal act, 381.
- supplementary examination under Federal act, 381.
- under Ohio act, 171.

**MEDICAL EXAMINERS,**

- report under Illinois act, 341.

**MEDICAL EXPENSES.**

- payment from Ohio insurance fund, 171.
- procedure to obtain compensation and money to pay under Ohio act, 215.
- expenses under Nevada act, 290.
- under Rhode Island act, 367.

**MEDICAL REFEREES,**

- appointment under British act, 577.
- conclusiveness of certificate, 561.
- selection to sit as assessor under British act, 577.
- submission of question of disability to referee, 562.

**MEDICAL REPORT,**

- proof of death by physician, 150.

**MEDICAL SUPPLIES,**

- compensation under California act, 263.

**MEDICAL WITNESSES,**

- under Washington act, 124.

[References are to Sections.]

**MEDICINE,**

- application for money to pay under Ohio act, 186, 192.
- compensation during waiting period under Massachusetts act, 303.
- compensation under Illinois act, 326.
  - under New Jersey act, 255.
  - under Wisconsin act, 227.
- formal procedure for obtaining under Ohio act, 185, 191.
- payment from Ohio insurance fund, 171.

**"MEMBER OF FAMILY,"**

- defined, 445.
  - in British act, 577.
  - in Kansas act, 292.

**MEMORANDUM,**

- agreement under British act, 577.
  - under Massachusetts act, 303.
  - under Rhode Island act, 267.

**MENTAL INCAPACITY,**

See INCOMPETENCY; IMBECILITY; INSANITY.

**MERCURY POISONING,**

- occupational disease under British act, 577.

**MICHIGAN,**

- enactment of compensation law, 5.
- forms required for administration of act, 357-365.
- letter of instructions to employers, 356.
- nature and scope of act, 354.
- text of compensation act, 355.
- work of commission, 12.

**MILEAGE,**

- witness under Ohio act, 171.

**MILITARY SERVICE,**

- excepted by British act, 577.

**MILL,**

- definition in Washington act, 124.
- hazardous employment under Arizona act, 375a.

**MINES,**

- acceleration of diseases by accident, 463.
- accident insurance under German laws prior to 1911, 582.
- classification under Washington act, 124.
- defined in Kansas act, 292.
  - in Washington act, 124.

[References are to Sections.]

**MINES—Continued.**

- employés protected by Federal act, 380.
  - by Arizona act, 375a.
  - by Illinois act, 326.
  - by Kansas act, 292.
  - by Montana act, 64.
  - by Nevada act, 290.
  - by New Hampshire act, 296.
- German liability act of 1871, 16.
- German societies, 31.
- hazardous employment under Washington act, 124.
- manager not workman under British act, 432.

**MINER'S BEAT KNEE AND ELBOW,**  
occupational disease under British act, 577.

**MINERS' SICK CLUBS,**  
under German law prior to 1911, 581.

**MINNESOTA,**  
members employés' commission, 9.

**MINORS,**  
See **INFANTS.**  
compensation of infant dependents under New Jersey act, 255.

**MISREPRESENTATION,**  
as to age, whether wilful misconduct, 469.

**MISTAKE,**  
excuse for failure to serve notice of injury, 553.

**MODERN VIEWS,**  
employers' liability, 4.

**MODIFICATION,**  
See **AMENDMENT.**  
agreement or award under Kansas act, 292.  
awards by Ohio board, 174.  
awards under New Jersey act, 255.  
findings of Ohio Board, 171.  
remedies under Michigan act, 355.  
rules by Ohio board, 174.  
rules by Wisconsin commission, 227.

**MONTANA,**  
enactment of insurance law, 6.  
members of liability commission, 9.  
workman's insurance act, 60-64.

[*References are to Sections.*]

**MONTHLY ALLOWANCE,**

partial payment voucher under Washington act, 159.  
under Montana act, 64.

**MONTHLY STATEMENT,**

under Washington act, 135.

**MOTHER,**

See PARENTS.

dependent though supported by husband, 505.  
total dependent of one of several sons, 497.

**MUNICIPAL CORPORATIONS,**

See CITIES.

as employer, 511.  
under California act, 263.  
instructions under Washington act, 141.  
principal contractor, 512.  
subject to California act, 263.

**MUNN v. ILLINOIS,**

assertion of regulatory power of legislature, 93.

**MUTUAL BENEFIT,**

relief department not affected by Illinois act, 326.

**MUTUAL INSURANCE COMPANIES,**

right to engage in liability insurance business in Massachusetts, 304.  
under German law prior to 1911, 581.

**N**

**NATURAL HAZARD,**

fixed percentage, 36.

**NAVY,**

British act inapplicable to sailors in service of crown, 577.

**NAVY YARDS,**

employés protected by Federal act, 378.

**NEGLIGENCE,**

See CONTRIBUTORY NEGLIGENCE; FAULT; PROXIMATE CAUSE; WILFUL NEGLIGENCE.

effect on existing actions of enactment of New Jersey act, 255.  
essential that liability should depend on proximate cause under California act, 263.  
wilful negligence of employers under Ohio act, 171.

**NERVOUSNESS,**

incapacity, 452.



*[References are to Sections.]***NERVOUS SHOCKS,**

whether accidental, 451.

**NETHERLANDS,**

schedule, 114.

**NEVADA,**

enactment of compensation law, 5.

nature and scope of act, 289.

procedure by boards of arbitration, 289.

text of compensation act, 290.

work of commission, 12.

**NEW HAMPSHIRE,**

administration of compensation act, 297.

enactment of compensation law, 5.

formal procedure, 298.

forms used in administration of compensation act, 298-300.

nature and scope of act, 295.

text of compensation act, 296.

work of commission, 12.

**NEW JERSEY,**

construction of act and procedure thereunder, 259.

enactment of compensation law, 5.

forms used in administration of act, 260-261.

members of employers' liability commission, 9.

nature and scope of act, 254.

text of act, 255.

text of act creating employer's liability commission, 257.

text of act requiring report of industrial accidents, 258.

text of supplementary act saving existing contracts, 256.

work of commission, 12.

**NEW TRIAL,**

no power by arbitrator to grant, 567.

**NEW YORK,**

argument for constitutionality of act, 58.

author's views upholding views of court, 59.

compensation law first construed by courts, 54.

enactment of compensation law, 5.

first state to enact modern law, 7.

general liability law with compensation features, 59a.

members of liability commission, 9.

nature and scope of act, 55.

statistics of experience of insurance companies, 37.

text of compensation act, 56.

[References are to Sections.]

NEW ZEALAND,

schedules, 115.

NEXT FRIEND,

appointment under Michigan act, 355.

representation of incompetent under Massachusetts act, 303.

NOMINAL AWARD,

to keep proceedings alive, 566.

NONELECTION,

See ELECTION.

NONRESIDENTS,

See ALIENS.

not excluded as dependents under Wisconsin act, 227.

NORWAY,

schedules, 116.

NOTARIES PUBLIC,

authority to take depositions under California act, 265.

NOTICE,

See FORMS.

acceptance of California act, 270.

acceptance by employé of Michigan act, 355, 362.

by employer, 357.

acceptance of Massachusetts act by employer, 308.

acceptance of Rhode Island act, 370.

accident under British act, 576, 577.

under Arizona act, 375a.

under Illinois act, 326.

under Kansas act, 292.

under Maryland act, 376a.

under New Hampshire act, 296.

under New York act, 56.

under Washington act, 124.

amendment under British act, 577.

assessment of costs in arbitration proceeding under Massachusetts act, 322.

assessment under Washington act, 136.

by employé to employer under Massachusetts act, 308.

by employer of compliance with Wisconsin act, 241.

claim for injury under British act, 550.

under Michigan act, 363.

claim of common law rights under Massachusetts act, 311.

under Rhode Island act, 371.

construction of time of serving under Wisconsin act, 233.

continuing disability under Federal act, 381.

[References are to Sections.]

**NOTICE—Continued.**

- defects do not invalidate in Illinois, 326.
- duty of clerk to record under Ohio act, 174.
- duty of employer to post notice under Wisconsin act, 235.
- duty of Ohio board to prescribe, 171.
- duty of Ohio employer to post notice on payment of premium, 171.
- election by employers under Michigan act, 361-362.
- election by employé under Wisconsin act, 245.
- election under California act, 263.
- election under Kansas act, 292.
- employers' election under Wisconsin act, 240.
- employer's notice of intention to discontinue payments under Illinois act, 330-331.
- employer to employés under Massachusetts act, 310.
  - under Ohio act, 179.
  - under Maryland act, 376a.
- employé's claim of compensation under California act, 275.
- entry of findings and award under Wisconsin act, 253.
- essentials under British act, 577.
  - under Illinois act, 326.
  - under Massachusetts act, 303.
  - under Michigan act, 355.
  - under Nevada act, 290.
- failure to serve not excused by ignorance, 553.
- fatal accident under Illinois act, 335.
- Federal act, posted in establishments affected, 381.
- filing claim for compensation under California act, 277.
- first notice of death under Ohio act, 184.
- first notice of injury under Ohio act, 183.
- forms of procedure on notice under Ohio act, 182.
- inaccuracies do not invalidate under Massachusetts act, 303.
  - under Arizona act, 375a.
  - under Rhode Island act, 367.
  - under British act, 577.
- hearing under California act, 263, 278.
  - under Wisconsin statute, 227, 250.
- injury and claim for compensation under Illinois act, 334.
- injuries by employer under Massachusetts act, 308.
- injuries by employé under various American acts, 410.
- injury under Massachusetts act, 303, 319.
  - under Michigan act, 355.
  - under New Jersey act, 255.
  - under Rhode Island act, 367.
  - under Wisconsin act, 227.
- intention to file petition for lump sum payment under Illinois act, 336.

[References are to Sections.]

**NOTICE—Continued.**

- medical examination under Michigan act, 355.
  - under Arizona act, 375a.
- necessity of notice of non-election under Illinois act, 326.
- necessity of stating amount of claim, 554.
- non-election by employé under California act, 274.
  - under Illinois act, 332.
  - under Wisconsin act, 246.
- non-election of employer under Illinois act, 329.
- non-election under New Jersey act, 255.
- not essential that employé have notice of acceptance of Michigan act by employer, 355.
- posting under Massachusetts act, 308.
  - under Wisconsin act, 227.
- refusal of employé to submit to examination, 315.
- required by employer, employé and state officials under various American acts, 407.
- right to compensation under Federal act, 383, 395.
- rules for posting under California act, 265.
- service as soon as practicable under British act, 553.
- service under British act, 577.
  - under Kansas act, 292.
  - under Massachusetts act, 303.
  - under Michigan act, 355.
  - under Rhode Island act, 367.
- statement to be posted by Illinois employer, 333.
- statement of compensation provided by Illinois act, 326.
- subscribers to Massachusetts insurance association, 303.
- terminating election under New Jersey act, 255.
- termination of relation with insurance company under Massachusetts act, 308.
- that Massachusetts employer has ceased to be a subscriber, 314.
- time of filing notice of injury under California act, 263.
- time of service under Nevada act, 290.
- to employer of claim under Wisconsin act, 247.
- to employé refusing medical examination under Massachusetts act, 316.
- to physician to fill report under California act, 284.
- used by employers under Ohio act, 176.
- when notice not bar to proceeding under Massachusetts act, 303.
- withdrawal of election of employer under Illinois act, 326.
  - under Michigan act, 360.
  - under Wisconsin act, 239.

**NOTIFICATIONS,**

- under German code 1911, 601.

## [References are to Sections.]

## NUMBER,

- liability under Ohio act dependent on number of employés, 171.
- limitation of Kansas act by number of employes, 292.
- limitation of Rhode Island act by number of employés, 367.

## NURSES,

- application for money to pay expenses under Ohio act, 186, 191, 192, 199, 216.
- formal procedure for procuring services under Ohio act, 195.
- payment from Ohio insurance fund, 171.
- whether covered by acts, 437.

## O

## OATH,

- employers under Ohio act, 189, 200, 210, 221.
- employers to pay-rolls under Ohio act, 193.
- lay witness under Ohio act, 190, 197, 204, 214, 225.
- power of Michigan board to administer, 355.
- power to administer under Ohio act, 171.

## OBLIGATION OF CONTRACTS,

- whether compensation laws violate, 92, 172

## OBLIGATORY INSURANCE,

See COMPULSORY INSURANCE.

## OBSTRUCTION,

- effect of obstruction of medical examination under British act, 577.

## OCCUPATIONAL DISEASES,

See ANTHRAX, POISONS AND TITLES OF PARTICULAR DISEASES.

- apportionment between different employers, 461.
- compensation under British act, 577.
- contracted in service of different employers, 461.
- essential that they be connected with employment, 461.
- excluded under German code 1911, 598.
- gradual paralysis, 459.
- heart injury, 457.
- under British act, 577.

## OFFICE,

- California Board, 263, 265.

## OFFICERS,

See BOARDS; COMMISSIONS; VACANCIES.

- deputies and assistants under Washington act, 124.
- employés' insurance association, 303.
- sickness insurance fund under German code 1911, 601.
- vacancies under Massachusetts employés insurance association act, 303.

*[References are to Sections.]*

## OHIO,

- act an indirectly compulsory act, 169.
- an insurance act, 168.
- act applicable to employers of more than five men, 171.
- decision of Supreme Court sustaining law, 172.
- department created for administration of act, 171.
- enactment of insurance law, 6.
- expenses of administration of Ohio act, 171.
- forms used in administration of act, 176-225.
- liability insurance statistics, 45.
- liability of employer under act, 170.
- members of liability commission, 9.
- nature of insurance act, 167.
- procedure as to employers, 175.
- rules of procedure before state liability board, 174.
- statistics showing operation of old and new systems, 41.
- summary of provisions of law, 66.
- table showing amount received in settlement under old system, 42.
- text of act and interpretation by board and attorney general, 171.
- work of state commission, 12.
- work shop and factory inspection and regulation act, 173.

## OLD AGE INSURANCE,

- under German law prior to 1911, 593.

## OLD AGE PENSION,

- sources of fund under German laws, 593.

## OPTION,

- election to receive compensation under Washington act, 124.
- employés in case of employer's wilful negligence under Ohio act, 171.
- under California act, 263.
  - Nevada act, 290.
  - Ohio act, 169.
- whether act may be optional, 99.
- workmen under British act, 577.

## ORCHESTRAS,

- covered by German code 1911, 599.

## ORDER.

- effect of obedience of order which should not be obeyed, 483.
- intentional disobedience whether wilful misconduct, 467.
- modification by Ohio Board, 171.

*[References are to Sections.]*

**ORGANIZATION,**

agricultural accident insurance under German code 1911, 601.  
insurance under German code 1911, 601.

**ORPHANS,**

See **DEPENDENTS.**

compensation for orphan dependent under New Jersey act,  
255.

under German code 1911, 599.

**OUTWORKER,**

defined in British act, 577.

**OVERPAYMENT,**

recovery under British act, 550.

**P**

**PAIN,**

no allowance, 524.

**PANAMA CANAL,**

employés benefited by Federal act, 379.

**PAPER MILLS,**

factories under Kansas act, 292.

**PARALYSIS,**

total disability under Illinois act, 326.

whether accidental, 459.

**PARENTS,**

See **DEPENDENTS.**

dependents, 499.

under British act, 577.

under Kansas act, 292.

under Nevada act, 290.

under New Hampshire act, 296.

mother dependent though supported by husband, 505.

mother total dependent of one of several sons, 497.

notice of claim of right under Rhode Island act, 372.

**PARISH SICK INSURANCE,**

under German law, 581.

**PARTIAL DEPENDENTS,**

compensation under California act, 263.

under Kansas act, 292.

under Massachusetts act, 303.

under Nevada act, 290.

under New Hampshire act, 296.

under Wisconsin act, 227.

total and partial dependents of same workman, 498.

*[References are to Sections.]*

**PARTIAL DISABILITY,**

See **TOTAL DISABILITY.**

compensation under California act, 263.

under Arizona act, 375a.

under Federal act, 381.

under Kansas act, 292.

under Maryland act, 376a.

under Massachusetts act, 303.

under Michigan act, 355.

under Nevada act, 290.

under New Hampshire act, 296.

under New Jersey act, 255.

under Ohio act, 171.

under Rhode Island act, 367.

under various American acts, 416.

under Wisconsin act, 227.

due to clumsiness on recovery, 521.

provision in Illinois act, 326.

**PARTIAL PAYMENT,**

voucher, 158, 159.

**PARTIES,**

to proceedings under California act, 265.

under Wisconsin act, 235.

joinder under California act, 265.

**PARTNERSHIP,**

British act inapplicable to partners in vessel, 577.

covered by Nevada act, 290.

employers under New Jersey act, 255.

under Wisconsin act, 227.

not beneficiaries under compensation acts, 433.

**PAUPERS.**

dependents, 501.

statistics, 48.

**PAY-IN ORDER,**

under Ohio act, 177.

**PAYMENTS,**

See **COMPENSATION.**

compensation under agricultural insurance, 601.

compensation under Federal act, 381.

under German laws prior to 1911, 586.

under Illinois act, 326.

under Massachusetts act, 303.



*[References are to Sections.]***PAYMENTS—Continued.**

- demand for quarterly premium under Washington act, 138.
- instalments under California act, 263.
- methods under Rhode Island act, 367.
- navigation accident insurance under German code 1911, 601.
- periodical payments under New Jersey act, 255.
- recovery of overpayments made by employers, 550.

**PAYMENT INTO COURT,**

- under British act, 549.

**PAY OFFICE,**

- injury to employé going to and from, 473.

**PAYROLL,**

- classification based on, 171.
- evidence under California act, 263.
- form under Washington act, 133.
- inspection under Michigan act, 355.
- penalty for misrepresentation under Washington act, 124.

**PENALTIES,**

- failure of employer to report accident, 303.
  - under Kansas act, 292.
- imposed by Montana act, 64.
- misrepresentation of payroll under Washington act, 124.
- non-compliance with award under Wisconsin act, 227.
- penal provisions under German code 1911, 601.
- provisions in various American acts, 429.
- refusal to conform to Illinois act, 326.
- refusal to make report of accident under New Jersey act, 258.
- reservation under Kansas act, 292.

**PENSION,**

- invalidity under German code 1911, 599.
- invalid and old age insurance under German laws prior to 1911, 593.
- Lloyd-George act, 578.
- payment in kind under German code 1911, 601.
  - under German code 1911, 601.
- voucher under Washington act, 160, 161.
- widow's pension under German code 1911, 599.
- withdrawal and suspension under German code 1911, 601.

**PERIODICAL PAYMENTS.**

See COMPENSATION.

**PERMANENT DISABILITY,**

- compensation under Illinois act, 326.
- occurring after injury under Illinois act, 326.

*[References are to Sections.]***PERMANENT PARTIAL DISABILITY,**

- compensation under New Jersey act, 255.
- forms under Ohio act, 191.
- under Washington act, 124.

**PERMANENT TOTAL DISABILITY,**

- formal procedure to obtain compensation under Ohio act, 198.
- forms under Ohio act, 198.
- under Ohio act, 171.
- voucher under Washington act, 160.

**PERJURY,**

- oath to insurance certificate under Massachusetts act, 303.

**PERSONAL INJURY,**

- See ACCIDENTS; CLAIMS; INJURIES; SCOPE OF EMPLOYMENT.

**PETITION,****See PLEADING.**

- appeal from award of arbitrators under Illinois act, 349.
- appointment of guardian or administrator under Illinois act, 346.
- appointment of neutral physician under Illinois act, 352.
- compensation under Rhode Island act, 374b.
- employé's administrator for lump sum payment under Illinois act, 344.
- employé's for lump sum payment under Illinois act, 345.
- lump sum payment under Illinois act, 342-343.
- notice of intention to file, asking lump sum payment under Illinois act, 336.
- to court in case of dispute under New Jersey act, 255.
- review of agreement of award under Illinois act, 353.
- under Rhode Island act, 374b.

**PHARMACIES,**

- covered by German code 1911, 598.

**PHOSPHORUS POISONING,**

- occupational disease under British act, 577.

**PHOTO ENGRAVING,**

- hazardous employment under Washington act, 124.

**PHYSICAL EXAMINATIONS,****See MEDICAL EXAMINATION.**

- under Ohio act, 171.

**PHYSICIAN,****See MEDICAL EXAMINATION.**

- appointment of neutral physician by Massachusetts board, 303.

[References are to Sections.]

**PHYSICIAN—Continued.**

- authority to appoint under Washington act, 124.
- certificate in proof of death under Ohio act, 209, 220.
- certificate under Federal act, 389.
  - under Kansas act, 292.
- duty of physician to keep record under California act, 264.
- demand for presence of personal physician at examination, 556.
- effect of advice against surgical operation, 448.
- fee bill under Ohio act, 187, 194, 201, 222.
- fees under Michigan act, 355.
- fees subject to approval by board under Massachusetts act, 303.
- forms for use under California act, 280.
- form of report of attending physician under Washington act, 146, 147.
- medical examination by neutral physician under Kansas act, 292.
- notice to doctor to file report under California act, 284.
- petition for appointment of neutral under Illinois act, 352.
- proof of death under Washington act, 150.
- report of accident under California act, 281.
- right of employé to have personal physician present at examination, 303.
  - under Arizona act, 375a.
  - under Federal act, 381.
  - under California act, 263.
  - under Illinois act, 326.
  - under Kansas act, 292.
  - under Michigan act, 355.
  - under New Jersey act, 255.
  - under Rhode Island act, 367.
  - under Wisconsin statute, 227.
- testimony by court physician under Kansas act, 292
- whether charity physician included in acts, 437

**PILOTS,**

- beneficiaries under British act, 577.

**PITTSBURG SURVEY,**

- statistics, 38.

**PLACE,**

- payment of injured workman under Kansas act, 292.

**PLAYFUL ACTS,**

- exclusion of resulting injuries, 476.

[*References are to Sections.*]

**PLEADINGS,**

See PETITION:

amendment under British act, 555.

under California act, 265.

under Wisconsin act, 235.

answer under California act, 265.

great strictness not demanded, 555.

petition in case of disputes under New Jersey act, 255.

petition to recover compensation under New Hampshire act,  
296.

review of Wisconsin award, 227.

service under California act, 265.

under California act, 265.

under Rhode Island act, 367.

**POISONING,**

occupational disease under British act, 577.

whether an accident, 453.

**POLICE FORCE,**

defined in British act, 577.

policemen not covered by British act, 439.

**POLICE POWERS,**

application to Montana act, 61.

bank depositor's guarantee acts, 78.

compensation laws a proper exercise, 93.

declaration in Washington act, 124.

extension to great public needs, 78.

fireman's fund cases, 82.

includes what, 172.

limitations, 57.

Ohio law not infringement, 172.

sheep-dog fund cases, 80.

whisky cure cases, 81.

**POLICIES,**

See INSURANCE.

under Massachusetts employes' insurance association, 303.

under Maryland act, 376a.

**POPULAR USE,**

construction of words in British act, 573.

**PORT,**

defined in British act, 577.

instructions under Washington act, 141.

**POSTHUMOUS CHILDREN,**

dependents, 502.

[*References are to Sections.*]

**POSTING,**

See NOTICE.

**POST OFFICE,**

collections and disbursements through German post office, 601.

**POWDER,**

See EXPLOSIVES.

**POWDER MILLS,**

factories under Kansas act, 292.

hazardous employment under Washington act, 124.

workers covered by New York act, 56.

**PRACTICAL JOKES,**

exclusion of injury received, 476.

**PRACTICE,**

See PROCEDURE.

rules under California act, 265.

**PREFERENCES,**

claims for compensation, 426.

under Arizona act, 375a.

under California act, 263.

under Illinois act, 326.

under Maryland act, 376a.

under Nevada act, 290.

under Massachusetts act, 303.

under Michigan act, 355.

under New Hampshire act, 296.

under New Jersey act, 255.

under New York act, 56.

under Rhode Island act, 367.

under Wisconsin act, 227.

compensation claims on insolvency of insurance company, 577.

**PREJUDICE,**

burden of proof of lack under British act, 553.

delay in service of notice of injury, 553.

**PREMIUM,**

See INSURANCE.

application for premium under Ohio act, 177.

apportionment under Maryland act, 376a.

comparison under Ohio law with liability insurance rates, 180.

duty of Ohio board to fix rates, 171.

employés' insurance association, 303.

under Michigan act, 355.

[References are to Sections.]

**PRESENT VALUE,**

See LUMP SUM PAYMENT.

deposit to release employer under Michigan act, 355.

**PRESIDENT ROOSEVELT,**

recommendation of compensation law, 13.

**PRESUMPTION,**

acceptance under California act, 263.

under Kansas act, 292.

continuance of employment, 530.

death from lapse of time, 507.

election by employer under Illinois act, 326.

that casual laborer will continue employment, 542.

**PREVENTION,**

accidents under German laws, 587, 601.

**PREVIOUS DISABILITY,**

effect of Michigan act, 355.

right to consider in compensation under Rhode Island act,  
367.

**PREVENTIVE REGULATIONS,**

under German laws prior to 1911, 587.

**PRINCIPAL CONTRACTOR,**

See INDEPENDENT CONTRACTOR.

liability, 512.

liability under British act, 577.

under Illinois act, 326.

under Kansas act, 292.

under Nevada act, 290.

under New York act, 56.

liability on subletting under Ohio act, 171.

liability under various American statutes, 405.

right to employ sub-contractor under Kansas act, 292.

**PRINTING WORKS,**

classification under Washington act, 124.

factories under Kansas act, 292.

hazardous employment under Washington act, 124.

**PRISONS,**

deduction while workman incarcerated, 536.

**PROCEDURE,**

See ARBITRATION; CONTINUANCE; ELECTION OF REMEDIES; EVIDENCE;

FORMAL PROCEDURE; HEARING; JUDGMENT; PROCESS.

adoption by Wisconsin commission, 227.

apportionment among dependents, 564.

## [References are to Sections.]

**PROCEDURE—Continued.**

- arbitration under British act, 577.
- as to injured employés, 181.
- before imperial insurance office under German code 1911, 601.
- combination and separation of sickness insurance under German code 1911, 601.
- determination of benefits under German code 1911, 601.
- disputes under various laws, 56, 109-120, 255, 290, 303, 326, 355, 555, 557.
- duty of Ohio board to adopt, 171.
- formal procedure, 134, 185, 198, 237, 266, 293, 309, 358, 369.
- in case of death under Federal act, 393.
- in case of disability under Federal act, 385.
- in case of dispute under New Jersey act, 255.
- informal and liberal under Wisconsin act, 228.
- in Superior Court under Rhode Island act, 373.
- liberality of procedure on hearing before Ohio Board, 171.
- nominal award to keep proceedings alive, 566.
- on notice under Ohio act, 182.
- reopening of proceedings under German code 1911, 601.
- rules under California act, 265.
- special provisions for navigation accident insurance under German code 1911, 601.
- summary under Michigan act, 355.
- to obtain compensation and money to pay for medical, hospital and funeral expenses, under Ohio act, 215.
- to obtain compensation in case of permanent total disability under Ohio act, 198.
- under British act, 546-571.
- under German code 1911, 601.
- under Illinois act, 327.
- under Massachusetts act, 303.
- under Michigan act, 355.
- under Wisconsin act, 235-253.

**PROCESS,**

See NOTICE; SERVICE.

- execution of decree under Rhode Island act, 367.
- service in case of review of Wisconsin award, 227.
- summary under Michigan act, 355.
- under Massachusetts act, 303.

**PROFITS,**

- consideration of profits of business carried on by injured workman, 539.

**PROHIBITIONS,**

- under German code 1911, 601.

*[References are to Sections.]***PROOF,**See **EVIDENCE**.authority of Washington board to regulate proof of accident,  
124.

death under Washington act, 150, 151.

duty of Ohio board to prepare and furnish blank forms, 171.

rules governing proof before Ohio board, 174.

**PROXIMATE CAUSE,**

death under Michigan act, 355.

injury under California act, 263.

under Kansas act, 292.

right to compensation as dependent on, 518.

whether injury must be proximate cause of accident, 466.

**PRUSSIA,**

common law on master's liability, 15.

**PUBLIC EMPLOYEES,**See **GOVERNMENT EMPLOYEES**.**PUBLIC INTEREST,**

basis of compensation laws, 74.

when property becomes clothed with, 93.

**PUBLIC POLICY,**

meaning of term, 228.

**PUBLIC PURPOSE,**

essential to valid tax, 86-87.

tax determined by legislature, 88.

**PUBLIC SERVICE CORPORATIONS,**

employers under California act, 263.

under Michigan act, 355.

**PUBLIC WORK,**

liability under Washington act, 124.

**Q****QUARRIES,**

classification under Washington act, 124.

defined in Kansas act, 292.

in Washington act, 124.

covered by Illinois act, 326.

by Kansas act, 292.

by New Hampshire act, 296.

hazardous employment under Washington act, 124.

**QUARTERLY PAYMENT,**

demand under Washington act, 138.



[References are to Sections.]

**QUEENSLAND,**

schedule, 117.

**QUESTION OF FACT,**

accident under British act, 573.

conclusiveness of findings under British act, 563.

defective medical treatment, 464.

dependency, 303, 496.

no review under British act, 570.

recovery from injury, 563.

whether existing disease accelerated by accident, 463.

whether recovery complete, 519.

whether workman understood compromise, 516.

willful negligence of employé under New Jersey act, 255.

**QUORUM,**

California board, 263.

Massachusetts employés' insurance association, 303.

Ohio board, 171.

**R**

**RAILWAYS,**

See **STREET RAILWAYS.**

accident insurance under German law prior to 1911, 582.

application of Wisconsin act, 227.

classification under Washington act, 124.

definition in Kansas act, 292.

definition of "employment on railways," 292.

employés covered by New York act, 56.

employments covered by New Hampshire act, 296.

hazardous employment under Washington act, 124.

operation covered by Kansas act, 292.

by Arizona act, 375a.

by Nevada act, 290.

by New Hampshire act, 296.

whether work "on, in or about" railroads, 492.

**RATES,**

See **COMPENSATION; SCALE OF COMPENSATION.**

duty of Ohio board to fix rates, 171.

under Washington act, 124, 165, 166.

**REASONABLENESS,**

demand for personal physician, 556.

refusal to undergo operation, 448.

**RECEIPTS,**

authority of Washington board to issue, 124.

compensation under Massachusetts act, 323, 324.

old age insurance under German laws, 593.

*[References are to Sections.]*

**RECORDS,**

- accident under Federal act, 381.
- duty of California board to provide proper record book, 263.
- duty of California physician to keep, 264.
- duty of employer to keep record of injuries, 264, 303.
- examination by Massachusetts board, 303.
- injuries to be kept by Michigan employer, 355.
- medical reports under Federal act, 381.
- open to inspection under California act, 264.
- power of Ohio board to require production, 171.
- power to compel production under Massachusetts act, 303.
- proceedings of Ohio board, 171.
- subject to inspection under Michigan act, 355.
- use in proceedings under Michigan act, 355.

**REDEMPTION,**

See LUMP SUM PAYMENT.

**REDUCTION,**

- compensation by reason of change of circumstances, 531.

**REDUCTION WORKS,**

- hazardous employment under Washington act, 124.

**REFINERIES,**

- factories under Kansas act, 292.

**REGISTRAR,**

- jurisdiction under British act, 548, 577.

**REGISTRATION,**

- establishments under German code 1911, 601.

**REGULATIONS,**

See RULES.

- under Nevada act, 290.

- made by secretary of state under British act, 577.
- power of insurance association to make and enforce, 303.
- prescribed by Federal act, 381.
- safeguard regulations preserved, in Washington, act, 124.

**REIMBURSEMENTS,**

- under German laws prior to 1911, 594.

**RELEASE,**

- employers by conduct of employé under Michigan act, 355.
- filing under Kansas act, 292.
- grounds for setting aside under Kansas act, 292.
- subscribers under Massachusetts act, 303.
- to employer under Montana statute, 64.
- under Wisconsin act, 227.
- vitiating by fraud, 546.

[*References are to Sections.*]

**RELIEF FUNDS,**

- effect of acceptance on amount of compensation, 537.
- membership under Michigan act, 355.
- not affected by Illinois act, 326.

**REMAND,**

- record under Wisconsin act, 227.
- report under California act, 263.

**REMEDIES,**

- by Kansas act, 292.
- constitutional guaranty, 73.
- contrast of German and English plans, 51.
- creation of new remedy by act, 67.
- election under various American acts, 292, 422.
- vested rights of employes, 73.

**REMOVAL,**

- effect of removal of injured workman beyond United Kingdom, 577.

**REPEAL,**

- distribution of fund on repeal of Washington act, 124.

**REPORTS,**

See **FORMS.**

- accidents by association under Massachusetts act, 308.
  - by boards, 124, 171, 264.
  - by casualty company under Wisconsin act, 249.
  - by employers under California act, 264.
  - by employer under Massachusetts act, 303.
  - by employer under Michigan act, 355.
  - by employer under Washington act, 143.
  - by employer and employe under Wisconsin act, 235.
  - by examining physician under Nevada act, 290.
  - by physician under California act, 264, 281.
- accidents under Federal act, 378.
  - under German code 1911, 601.
  - under Illinois act, 326.
  - under Kansas act, 292.
  - under Maryland act, 376a.
  - under New Hampshire act, 300.
  - under New Jersey act, 257.
  - under various American acts, 411.
- actual pay roll, under Washington act, 133.
- arbitrators under Illinois act, 326, 348.
  - under Massachusetts act, 320.
- disability under Federal act, 381.
- discontinuance of compensation under Federal act, 392.

## [References are to Sections.]

REPORTS—*Continued.*

- death under Federal act, 381, 393.
- duty of California employer to transmit supplemental, 264.
- employer's first report of accident under California act, 271.
- employer's supplemental report under California act, 272.
- essentials of accident reports under Illinois act, 326.
- fatal accident under Illinois act, 337.
- filed with Maryland insurance commissioner, 376a.
- first accident report of casualty company under California act, 286.
- first report of accident under Michigan act, 364.
- first report of accident under Wisconsin act, 242.
- form of report of attending physician under Washington act, 146.
- forms of reports under New Jersey act, 260, 261.
- form of supplementary report under Ohio act, 178.
- information under Kansas act, 292.
- injuries by employers under British act, 577.
- injury under Federal act, 381, 386.
- medical and surgical examiners under Illinois act, 341.
  - under Arizona act, 375a.
  - under Kansas act, 292.
- non-fatal accident under Illinois act, 339.
- operation of Washington act, 164.
- penalty for failure to report accident under Kansas act, 292.
  - under Massachusetts act, 303.
- request for fuller report of accident under California act, 283.
- secrecy of reports of accidents under New Jersey act, 258.
- special report under Washington act, 149.
- supplemental reports of accidents under Massachusetts act, 303.
  - under Michigan act, 365.
  - under New Hampshire act, 301.
  - under Wisconsin act, 243.
- supplemental report of casualty companies under California act, 287.
- supplementary report of fatal accident under Illinois act, 338.
- supplemental report of non-fatal accident after recovery under Illinois act, 340.
- surgeon's special report under Washington act, 147.
- termination of disability under Federal act, 381, 387.
- to commissioner of labor under New Hampshire act, 296.
  - under California act, 265.
  - under Federal act, 381.
  - under Ohio workshop and factory act, 173.
- witness of accident under Washington act, 148.

[References are to Sections.]

**REQUEST,**

medical examination under Federal act, 391.  
under Wisconsin act, 227.

**RES JUDICATA,**

original finding as to physical condition, 569.

**RESERVATIONS,**

penalties under Kansas act, 292.  
liability for wrong or negligence under Kansas act, 292.

**RETAINERS,**

right to include in weekly earnings, 528.

**RETROACTIVE OPERATION,**

See STATUTES.

whether Wisconsin act applies to contracts in existence at its enactment, 228.

**REVERSAL,**

award under California act, 263.

**REVIEW,**

See APPEAL.

action of employes' insurance association, 303.  
agreement or award under Kansas act, 292.  
award on change of circumstances, 569.  
award on increase or diminution of incapacity under Illinois act, 326.  
award under California act, 263.  
under Michigan act, 355.  
under Washington act, 124.  
under Wisconsin act, 230.  
by courts under Wisconsin act, 227.  
decisions of New Hampshire commissioner, 296.  
employer bound by application, 568.  
operation of Washington act, 165, 166.  
reports under Federal act, 381.  
weekly payments under British act, 577.

**REVOCATION,**

acceptance by employer under New Hampshire act, 296.  
compensation under foreign laws, 101-122.  
insurance certificate under Kansas act, 292.

**RHODE ISLAND,**

administration and procedure, 368.  
enactment of compensation law, 5.  
formal procedure under act, 369.  
forms for administration of act, 374b.

[References are to Sections.]

**RHODE ISLAND**—*Continued.*

- nature and scope of act, 366.
- procedure in the superior court, 373-374b.
- text of compensation act, 367.
- work of commission, 12.

**RISK,**

- See **ASSUMPTION OF RISK; INEVITABLE RISKS.**
- as basis of liability under New York act, 56.
- duty of Ohio board to fix premium, 171.

**RIVERS AND HARBORS,**

- employés protected by Federal act, 378.

**ROAD WORK,**

- classification under Washington act, 124.

**RULES,**

- See **ORDERS; REGULATIONS.**
- adoption by Wisconsin commission, 227.
- authority of directors of employés' insurance association to make, 303.
- authority of Massachusetts board to formulate, 308.
  - of Michigan board, 355.
  - Washington board, 124, 128-130.
- changes by Ohio board, 174.
- circular letter explaining Wisconsin act, 236.
- duty of superintendent of insurance to make under Kansas act, 292.
- duty of Ohio board to adopt, 171.
- effect of obedience of rules which should not be obeyed, 483.
- exempting employer from liability under California act, 263.
  - under Nevada act, 290.
- Massachusetts board, 308.
- modification of board rules under Ohio act, 174.
- practice under California act, 265.
- practice under Wisconsin act, 235.
- prescribed by employés' insurance association, 303.
- prescribed for administration of Federal act, 381.
- right to formulate under Massachusetts act, 303.
- supplementary under Massachusetts act, 308.
- whether breach amounts to wilful misconduct, 467.

**RUPTURES,**

- infant workman, 541.
- whether accidental, 458.

**RURAL SICK FUNDS,**

- under German code 1911, 597, 601.

[References are to Sections.]

**RUSSIA,**

schedule, 118.

**S****SAFEGUARDS,**

employer's responsibility under Washington act, 124.

regulations preserved in Washington act, 124.

**SAFETY REGULATIONS,**

effect of failure to comply with, under Illinois act, 326.

**SAILORS,**

beneficiaries under British act, 577.

definition in British act, 577.

injury while leaving and returning to ship, 489-490.

liability for compensation between owner and charterer of vessel, 441.

special provisions under German invalid and old age pensions, 601.

working on shares not within compensation act, 434, 435.

**SALARIES,**

California board, 263.

Massachusetts board, 303.

Michigan Accident Board, 355.

Ohio board, 171.

Washington commission, 124.

Wisconsin Industrial Commission, 227.

**SAVINGS,**

right to consider savings of employé under Rhode Island act, 367.

**SAWMILLS,**

classification under Washington act, 124.

**SAXONY,**

excepted from operation, German code 1911, 596.

**SCAFFOLDS,**

workers covered by Arizona act, 375a.

workers covered by Nevada act, 290.

workers protected by New York act, 56.

**SCALE OF COMPENSATION,**

See COMPENSATION.

Arizona, 375a.

California, 263.

foreign laws, 100-122.

Great Britain, 577.

Illinois, 326.

Kansas, 292.

[References are to Sections.]

**SCALE OF COMPENSATION**—*Continued.*

Michigan, 355.  
Nevada, 290.  
New Hampshire, 296.  
New Jersey, 255.  
Ohio, 171.  
Washington act, 124.  
Wisconsin, 227.

**SCHAEFFLE,**

views on compulsory insurance, 24.

**SCHEMES,**

alternative schemes of compensation under various American acts, 367, 423.  
various schemes of administration under American statutes, 402.

**SCHOOL DISTRICTS,**

employers under California act, 263.  
under Michigan act, 355.  
under Wisconsin act, 227.  
instructions under Washington act, 141.

**SCOPE OF EMPLOYMENT,**

accident while going to and from pay office, 473.  
acts, in emergencies, 485.  
attempts to save life of fellow employé, 484.  
burden of proof, 495.  
compensation denied where injury received outside scope of employment, 474.  
defined under Federal act, 399.  
dismissed employé on premises to remove tools, 479.  
essential that accident should occur to employé while engaged in, 263.  
under Kansas act, 292.  
exclusion of injury while playing jokes, 476.  
fall from wagon while attempting to recover dropped pipe, 482.  
injuries during lunch hour, 481.  
injuries on premises after discharge, 491.  
injury to collectors, 488.  
injury to employé away from master's premises, 477.  
injury to sailors leaving and returning to ship, 489-490.  
injury while doing forbidden acts, 475.  
injury while going from one employment to another, 486.  
injury while going to and returning from work, 486.  
malicious injury, 492.  
meaning of phrase in British act, 573.



[References are to Sections.]

**SCOPE OF EMPLOYMENT**—*Continued.*

- meaning of expression "accident arising out of and in the course of employment," 472.
- necessity that injury be received under British act, 577.
- obedience of order which should not be obeyed, 483.
- retroactive effect of statutes, 494.
- suffocation while asleep on premises of master, 487.
- temporary interruptions, 480.
- tetanus contracted by gardener, 478.
- whether work "on, in or about" a railway, 492.
- willful misconduct where injury received outside scope of employment, 467.

**SCOTLAND,**

- application of British act to Scotland, 577.

**SEAL,**

- Michigan board, 355.
- Wisconsin commission, 227.

**SECRETARY,**

- employment by California board, 263.
  - by Massachusetts board, 303.
  - by Michigan board, 355.
  - by New Jersey board, 257.
  - by Ohio board, 171.
  - by Wisconsin commission, 227.

**SECRETARY OF COMMERCE AND LABOR,**

- administration of Federal act, 378.

**SECRETARY OF STATE,**

- duties under British act, 577.

**SECURITY,**

- payment of compensation under foreign laws, 100-122.

**SEPARATION,**

- dependency where wife separated from husband, 506.

**SERIOUS MISCONDUCT,**

- See WILFUL MISCONDUCT.
- of employé defeats compensation under Massachusetts act, 303.
- effect under various American acts, 421.

**SERIOUS NEGLIGENCE,**

- meaning of term in British act, 467.

[References are to Sections.]

# SERVICE,

- admission under Wisconsin act, 252.
- notice of injury as soon as practicable, under British act, 553.
- notices under British act, 577.
  - under Kansas act, 292.
  - under Massachusetts act, 308.
  - under Michigan act, 355.
  - under Nevada act, 290.
  - under Rhode Island act, 367.
- pleadings under California act, 265.
- papers under Wisconsin act, 235.

# SET-OFF,

- payments under British act, 550.

# SETTLEMENT,

See COMPENSATION; COMPROMISE; FINAL SETTLEMENT.

- between parties under California act, 263.
- claim under Kansas act, 292.
- disputes under Belgian schedule, 102.
  - under British schedule, 109.
  - under British Columbia schedule, 103.
  - under Cape of Good Hope schedule, 104.
  - under Danish schedule, 105.
  - under Finland schedule, 106.
  - under French schedule, 107.
  - under German schedule, 108.
  - under Greek schedule, 110.
  - under Hungarian schedule, 111.
  - under Italian schedule, 112.
  - under Luxemburg schedule, 113.
  - under Netherlands schedule, 114.
  - under the New York act, 56.
  - under New Zealand schedule, 115.
  - under Norwegian schedule, 116.
  - under Queensland schedule, 117.
  - under Russian schedule, 118.
  - under South Australian schedule, 119.
  - under Swedish schedule, 120.
  - under West Australian schedule, 122.
- receipt under Massachusetts act, 324.
- right of parties to settle under Nevada act, 290.

# SHAFTS,

- construction covered by Nevada act, 290.

# SHEEP-DOG FUND CASES,

- analogy to compensation acts, 80.

[References are to Sections.]

**SHIP,**

defined in British act, 577.

**SHIPBUILDING,**

classification under Washington act, 124.

**SHIPPING,**

application of British act to employé in sea service, 577.

employment covered by German act 1911, 601.

**SHOCKS,**

whether nervous are accidental, 451.

**SICK CLUBS,**

change of membership on removal under German law, 581.

**SICK FUNDS,**

under German code 1911, 597.

**SICKNESS INSURANCE,**

German code laws, 601.

federation of funds under German code 1911, 601.

miners' funds under German code 1911, 601.

relation to invalidity and survivors' insurance under German code 1911, 601.

**SICK LEAVE,**

in lieu of compensation under Federal act, 383.

**SIMULATION,**

nervousness, 452.

**SISMONDI,**

views on insurance laws, 22.

**SISTERS,**

dependents under Kansas act, 292.

under Michigan act, 355.

under Nevada act, 290.

**SMELTERS,**

factories under Kansas act, 292.

hazardous employment under Washington act, 124.

**SOCIALISM,**

relation to industrial insurance, 29.

the Marx doctrine, 29.

**SOCIAL RESULTS,**

accidents under old system, 44.

**SOCIETIES,**

miners, 31.

[References are to Sections.]

SOLDIERS,

exemption from compulsory insurance under German laws  
prior to 1911, 593.

SOUTH AUSTRALIA,

schedule, 119.

SPAIN,

schedule, 121.

SPECIAL EXAMINATION,

medical under Federal act, 381.

SPECIAL REPORT,

surgeon under Washington act, 149.

SPECTACLES,

furnished under German law, 581.

STAMPS,

receipts for old age insurance under German laws, 593.  
use authorized in German code 1911, 599.

STATE,

employer under California act, 263.  
under Michigan act, 355.  
under Wisconsin act, 227.  
validity of compensation acts as to State, 74.

STATE COMMISSIONER,

reports of accidents under Kansas act, 292.

STATE EMPLOYEES,

See GOVERNMENT EMPLOYEES.

construction of term in Ohio act, 171.  
entitled to compensation under California act, 263.

STATE INSURANCE,

See INSURANCE.

German origin, 26.

STATE OBLIGATION,

theory of insurance legislation, 68.

STATE OFFICIALS,

notices required under various American statutes, 407.

STATE TREASURER,

bond to protect insurance fund, 171.  
custodian of Ohio insurance fund, 171.

STATE v. CLAUSEN,

decision sustaining constitutionality of Washington act, 127.

*[References are to Sections.]*

**STATEMENT,**

See FORMS.

election under Wisconsin act, 227.

to be posted by Illinois employer, 333.

**STATISTICS,**

analysis of German statistics, 46.

authority of Washington board to compile and preserve, 124.

average amount of settlement of fatal cases within specified limits, 42.

average amount received in settlement in Ohio under old system, 42.

duty of Ohio Board to make reports showing cause of injury, 171.

effect of old and new systems of compensation, 34.

experience under German insurance laws, 35.

fundamental economic conclusions, 50.

Illinois bureau, 326.

liability insurance in Ohio, 45.

miscellaneous data concerning old and new systems, 48.

paupers, 48.

percentage of employes receiving compensation, 34-49.

percentage of workmen receiving compensation under old system, 49.

Pittsburg survey, 38.

power of Ohio Board to make expenditures to obtain useful statistics, 171.

question of fault and prevention of accident, 36.

report of Illinois commission, 40.

results of invalid and old age insurance in Germany, 593.

report of operation of Washington act, 166.

studies showing effect of old and new systems, 36.

in Ohio, 41.

table showing cause of accidents under German laws, 36.

tabulation of New Jersey accidents, 257, 258.

Wisconsin bureau, 39.

**STATUTES.**

effect of partial invalidity of New Jersey act, 255.

extraterritorial effects of compensation laws, 465.

Illinois act not invalidated by invalid provisions, 326.

necessity that they rest on sound economic principles, 59.

provisions saving Washington act for partial invalidity, 124.

purpose to correct economic inequalities, 53.

retroactive effect, 292, 367, 494.

saving clause in Illinois act, 326.

whether Wisconsin act applies to contracts in existence at its enactment, 228.

[References are to Sections.]

STATUTES OF LIMITATIONS,

See LIMITATION OF ACTIONS.

STAY,

proceedings under Kansas act, 292.

STEAMBOATS,

classification under Washington act, 124.

STEAM HEATING PLANT,

factory under Kansas act, 292.

hazardous employment under the Washington act, 124.

STENOGRAPHERS,

authority of Ohio board to employ, 171.

employment under California act, 265.

STEPBROTHERS AND SISTERS,

dependents under British act, 577.

under Kansas act, 292.

STEP-CHILDREN,

dependents under Kansas act, 292.

under Washington act, 124.

STEP-PARENTS,

dependents under British act, 577.

under Kansas act, 292.

STEREOTYPING,

hazardous employment under Washington act, 124.

STEVEDORE,

schedule of compensation under Washington act, 124.

STIPULATIONS,

facts under Wisconsin act, 235.

in hearings under California act, 265.

STOCKYARDS,

schedule of compensation under Washington act, 124.

STRAINS,

See RUPTURES.

whether accidental, 458.

STREET RAILWAYS,

See RAILWAYS.

classification under Washington act, 124.

hazardous employment under Washington act, 124.

under Arizona act, 375a.

included in railways in Kansas act, 292.

operation covered by New Hampshire act, 296.

wilful misconduct of conductor, 231.

[References are to Sections.]

**STRIKES,**

injury to employé by strikers, 462.

**STRUCTURES,**

construction or demolition covered by Illinois act, 326.

**SUB-AQUEOUS WORK,**

classification under Washington act, 124.

**SUB-CONTRACTOR,**

liability under British act, 577.

under Kansas act, 292.

under Massachusetts act, 303.

under Nevada act, 290.

under New Jersey act, 255.

under New York act, 56.

**SUBJECTS,**

taxation, 84.

**SUBMISSION,**

disputes by Wisconsin commission, 227.

medical referee, under British act, 562.

under New Jersey act, 255.

**SUBPOENAS,**

fees for serving under Ohio act, 171.

power of Ohio board to issue, 171.

witnesses under California act, 279.

under Massachusetts act, 303.

under Michigan act, 355.

under Wisconsin act, 251.

**SUBSCRIBER,**

definition in Massachusetts act, 303.

Massachusetts employés' insurance association, 303.

notice that employer has ceased under Massachusetts act, 314.

**SUBSEQUENT EXAMINATION,**

medical under Federal act, 381.

**SUBSIDIARY SICK INSURANCE,**

under German laws prior to 1911, 581.

**SUBROGATION,**

employé against insolvent employer under Illinois act, 326.

liability under Michigan act, 355.

on insolvency of employer under Illinois act, 326.

under British act, 513, 577.

California act, 263.

Illinois act, 326.

[References are to Sections.]

SUBROGATION—*Continued.*

Kansas act, 292.

Massachusetts act, 303.

various American statutes, 405.

SUBSTITUTE FUNDS,

sickness insurance under German code 1911, 601.

SUFFERING,

no allowance, 525-530.

SUFFOCATION,

whether suffocation while asleep on master's premises is in course of employment, 487.

SUICIDE,

insane workmen, 471.

SUMMARY,

See STATISTICS.

comparison of old and new system in Ohio, 52.

under Washington act, 165, 166.

SUMMARY PROCEDURE,

under Massachusetts act, 303.

under New Jersey act, 255.

SUNSTROKE,

whether injury accidental, 449.

SUPERIOR COURT,

jurisdiction under Rhode Island act, 367.

SUPERVISION,

accident insurance under German code 1911, 601.

agricultural accident insurance under German code 1911, 601.

insurance under German code 1911, 601.

navigation accident insurance under German code 1911, 601.

sickness insurance under German code 1911, 601.

SUPPLEMENTAL RECORDS,

duty of California employer to transmit, 264

SUPPLEMENTAL REPORT,

accident under California act, 272.

under Massachusetts act, 303.

under Michigan act, 365.

under New Hampshire act, 301

under Ohio act, 178.

under Wisconsin act, 243.



[References are to Sections.]

**SUPPLEMENTAL REPORT**—*Continued.*

- by casualty companies under California act, 287.
- fatal accident under Illinois act, 338.
- request for fuller report under California act, 283.

**SUPPORT,**

See **DEFENDANTS.**

- defined by Wisconsin act, 234.

**SUPREME COURT,**

- jurisdiction of appeal under California act, 263.
- jurisdiction to review compensation cases under Massachusetts act, 303.

**SURGICAL AID,**

See **MEDICAL ATTENDANCE.**

- compensation under various American acts, 417.

**SURGICAL EXAMINERS,**

- report under Illinois act, 341.

**SURGICAL OPERATION,**

- effect of advice of physician against operation, 448.
- effect of refusal to undergo, 448.
- whether death from anaesthetic accidental, 450.

**SURGICAL SERVICES,**

See **MEDICAL ATTENDANCE.**

**SURGICAL TREATMENT.**

- authority of Washington board to supervise, 124.
- compensation under California act, 263.
- under Wisconsin act, 227.

**SURGEON,**

- report under Washington act, 147, 149.

**SURVIVORS,**

See **DEPENDENTS.**

- pension voucher under Washington act, 161.

**SURVIVOR'S INSURANCE,**

- under German code 1911, 601.

**SUSPENSION,**

- workman under British act, 577.

**SUSPENSORY AWARD,**

- to keep proceedings alive under British act, 566.

**SWEDEN,**

- schedule, 120.

[References are to Sections.]

## T

## TABLES,

See STATISTICS.

## TAXATION,

- attributes and limitation of taxing power, 83.
- basis of compensation and insurance laws, 67.
- basis of compulsory insurance, 27.
- compensation laws an exercise of taxing power, 83.
- necessity of benefit as a condition to right to tax, 89.
- necessity of public purpose, 86.
- necessity of return of benefit to tax-payer, 90.
- public purpose of tax for insurance, 67.
  - determined by legislature, 88.
- similarity of attributes to eminent domain, 85.
- subjects, 84.
- whether conditions of equality and uniformity satisfied, 91.
- whether Wisconsin act requires levy of invalid tax, 228.

## TAXICAB DRIVERS,

- work on shares, 435.
- exemption from German compulsory insurance laws, 593.

## TEETH,

- compensation for loss under New Jersey act, 255.

## TELEGRAPHER'S DISEASE,

- compensation under British act, 577.

## TELEGRAPHS,

- classification under Washington act, 124.
- hazardous employment under Washington act, 124.
  - under Arizona act, 375a.

## TELEPHONES,

- classification under Washington act, 124.
- hazardous employment under Washington act, 124.

## TEMPORARY DISABILITY,

- compensation under Ohio act, 171.
- schedule under New Jersey act, 255.

## TEMPORARY INTERRUPTIONS,

- whether suspends course of employment, 480.

## TEMPORARY PARTIAL DISABILITY,

- forms under Ohio law, 191.

## TEMPORARY TOTAL DISABILITY,

- compensation under Wisconsin act, 227.
- forms under Ohio law, 191.
- vouchers under Washington act, 158, 159.

[*References are to Sections.*]

**TERMINATION,**

disability under Washington act, 124.

**TEST,**

ability to do light work, 532.

**TETANUS,**

whether contracted in course of employment, 478.

**THEATERS,**

schedule of compensation under Washington act, 124.

**THEATRICAL COMPANIES,**

covered by German code 1911, 599.

**THIRD PERSON,**

injury from violence at hands of third person, 462,

liability under British act, 577.

under Wisconsin act, 227.

**THUMB,**

compensation for loss under Michigan act, 355.

under Massachusetts act, 303.

under New Jersey act, 255.

**TILE WORK,**

classification under Washington act, 124.

**TIME,**

See **LIMITATION OF ACTIONS.**

filing claim under Massachusetts, 303.

filing notices under British act, 577.

limits German code 1911, 601.

notice of injury under Rhode Island act, 367.

when compensation begins under various American acts, 414.

when employment commences, 486.

**TIPS,**

right to include in determining weekly earnings, 528.

**TOES,**

compensation for loss under Massachusetts act, 303.

under Michigan act, 355.

under New Jersey act, 255.

under Rhode Island act, 367.

**TOTAL DISABILITY,**

blindness under Illinois act, 326.

compensation, 519.

compensation under British act, 577.

under Arizona act, 375a.

under California act, 263.

under Illinois act, 326.

[References are to Sections.]

**TOTAL DISABILITY**—*Continued.*

- under Kansas act, 292.
- under Maryland act, 376a.
- under Michigan act, 355.
- under New Hampshire act, 296.
- under New Jersey act, 255.
- under Nevada act, 290.
- under Ohio act, 171, 191, 198.
- under Rhode Island act, 367.
- under various American acts, 415.
- under Wisconsin act, 227.
- loss of sight, 303, 520.

**TOWNS,**

- employers under Wisconsin act, 227.

**TRADE ASSOCIATION,**

- under German laws prior to 1911, 587.

**TRANSCRIPT,**

- appeal under Rhode Island act, 367.
- awards under California act, 263.

**TRANSFER,**

See ASSIGNMENT.

**TRAVELING EXPENSES,**

- Ohio board, 171.

**TRIAL,**

- See HEARINGS; QUESTIONS OF FACT.
- petition under New Jersey act, 255.
- right to refer to compensation in common law suit, under  
Ohio act, 171.
- under Rhode Island act, 367.

**TRUSSES,**

- furnished under German law, 581.

**TUBERCULOSIS,**

- whether covered by British act, 553.

**TUGS,**

- hazardous employment under Washington act, 124.

**TUNNELS,**

- classification of work under Washington act, 124.
- construction covered by Nevada act, 290.
- workers covered by New York act, 56.

*[References are to Sections.]*

## U

**UNAUTHORIZED ACTS,**

effect of unauthorized employment of servant, 443.

**UNDERTAKER,**

certificate of death and cost bill under Ohio act, 207, 218.  
proof of death under Washington act, 151.  
under German code 1911, 601.

**UNDUE INFLUENCE,**

as ground for setting aside award under Kansas act, 292.

**UNIFORM LAWS,**

members of committee to prepare uniform compensation laws,  
9.

**UNIFORMITY,**

See EQUALITY AND UNIFORMITY.

**UNIFORMITY OF OPERATION,**

compensation law, 94.  
whether compensation laws violate rule, 76, 92.

**UNITED STATES,**

Federal compensation act, 377-399.  
Federal compensation commission, 14.  
enactment of compensation law, 5.  
exclusion from operation of Washington act, 124.  
members of employers' liability commission, 9.

## V

**VACANCIES,**

in office of employes' insurance association, 303.  
California board, 263.  
Michigan industrial accident board, 355.  
Ohio board of awards, 171.  
Wisconsin board, 227.

**VESSEL,**

defined in British act, 577.

**VESTED RIGHTS,**

employee in remedies withdrawn by act, 73.  
existing remedies, 307.

**VILLAGES,**

employers under California act, 263.  
under Wisconsin act, 227.

**VIOLATION OF LAW,**

operation to defeat compensation under New Hampshire act,  
296.

[*References are to Sections.*]

**VIOLENCE,**

injury whether accidental, 462.

**VOTERS,**

Massachusetts employes' insurance association, 303.

**VOUCHERS,**

See **FORMS.**

burial expense under Washington act, 162.

final settlement under Washington act, 163.

partial payment under Washington act, 158.

pension under Washington act, 160, 161.

**W****WAGES,**

effect of general fall in wages, 534.

injury to employé going to and from pay office, 473.

local wage rate under German code 1911, 601.

**WAGNER,**

views on compulsory insurance, 25, 27.

**WAINWRIGHT COMMISSION,**

argument for constitutionality of New York act, 58.

**WAITING PERIOD,**

invalid and old age pensions under German laws prior to 1911.  
593.

one week under Ohio act, 171

under Arizona act, 375a.

under British act, 577.

under California act, 263.

under Federal act, 378.

under German law, 584.

under German invalidity and survivors' insurance, 601.

under German marine accident insurance laws, 591.

under Illinois act, 326.

under Kansas act, 292.

under Massachusetts, 303.

under Michigan act, 355.

under Nevada act, 290.

under New Hampshire act, 296.

under New Jersey act, 255.

under Rhode Island act, 367.

under Wisconsin act, 227.

**WAIVER,**

amount of compensation under Illinois act, 326.

common law rights by acceptance by employé of Rhode Island  
act, 367.

invalid under Michigan act, 355.

[References are to Sections.]

**WAIVER—Continued.**

- jury trial under Kansas act, 292.
- notice of waiver of common law rights under Massachusetts act, 312.
- not permitted under Rhode Island act, 367.
- right of action at common law under Massachusetts act, 303.
- right of compensation under Massachusetts act, 303.
- written notice of injury, 553.

**WASHINGTON,**

- constitutionality of act, 125, 126.
- decision sustaining constitutionality of Washington act, 127.
- enactment of insurance law, 6.
- forms used in administration of act, 131-166.
- members of compensation commission, 9.
- nature and scope of act, 123.
- official safety bulletin, 166.
- proposed amendment, 126.
- provision for distribution of funds in case of repeal, 124.
- rules and directions for administration of act, 128-130.
- statistical report of operation of act, 165, 166.
- text of act with instruction, 124.
- work of commission, 12.

**WATER-POWER PLANTS,**

- factories under Kansas act, 292.

**WATERWAY COMPANIES,**

- instructions under Washington act, 141.

**WATERWORKS,**

- hazardous employment under Washington act, 124.

**WATSON,**

- summary of operation of old and new systems in Ohio, 52.

**WEEKLY PAYMENTS,**

See COMPENSATION; PAYMENTS.

**WEEKLY WAGES,**

See AVERAGE WEEKLY WAGES.

- under Wisconsin act, 227.

**WERNER,**

- decision construing New York law invalid, 57.

**WEST AUSTRALIA,**

- schedule, 122.

[*References are to Sections.*]

WHARVES,

- hazardous employment under Washington act, 124.
- schedule of compensation under Washington act, 124.

WHISKY CURE CASES,

- analogy to compensation cases, 81.

WIDOW,

- See DEPENDENTS; HUSBAND AND WIFE.
- dependent under New Hampshire act, 296.
- compensation for death of husband under New Jersey act, 255.

WIDOW'S INSURANCE,

- under German code 1911, 599.

WIDOW'S MONEY,

- under German code 1911, 599.

WILFUL ACT,

- under Ohio act defined, 171.

WILFUL MISCONDUCT,

- See CONTRIBUTORY NEGLIGENCE.
- by employé defeats compensation under Massachusetts act, 303.
- burden of proof under New Jersey act, 255.

WILFUL NEGLIGENCE,

- defined in New Jersey act, 255.
- defined by Wisconsin commission, 231.
- defense under New Jersey act, 255.
- dismissal of incapacitated person for misconduct, 470.
- effect to deprive employé of compensation, 467.
  - under British act, 577.
  - under Kansas act, 292.
  - under Illinois act, 326.
  - under Michigan act, 355.
  - under New Hampshire act, 296.
  - under Rhode Island act, 367.
- effect under various American acts, 421.
- effect on workman's right to compensation under British act, 577.
- employé under California act, 263.
- employer under Massachusetts act, 303.
- intoxication, 468.
- misrepresentation as to age, 469.
- under California act, 263.
- what is serious neglect, 467.



*[References are to Sections.]***WINDOW CLEANER,**

casual employment, 440.

**WINKELBLECH,**

views on insurance laws, 23.

**WINSLOW,**

opinion upholding Wisconsin act, 228.

**WIRES,**

See **ELECTRICITY.**

**WISCONSIN,**

act not compulsory, 228.

application of act to railroads, 227.

circular letter to employers, 236.

commission not a court, 228.

construction of act by commission, 227.

decisions of commissions construing act, 229-234.

decision sustaining constitutionality of act, 228.

enactment of compensation law, 5.

formal procedure under act, 237.

forms used in administration of act, 238-253.

members of industrial committee, 9.

nature and scope of act, 226.

procedure under act, 235.

powers of Wisconsin commission, 230.

rules of practice, 235.

sessions of commission, 235.

statistics of operation of old and new systems, 39.

text of compensation act, 227.

work of commission, 12.

**WITHDRAWAL,**

See **ACCEPTANCE.**

acceptance of California act, 269.

election by employer under Illinois act, 326.

employment under Michigan act, 355.

notice by employé under Wisconsin act, 239.

notice by Michigan employers, 360.

**WITNESS,**

certificate and oath of lay witness under Ohio act, 197, 204.

contempt proceedings for refusal to testify, under Ohio act, 171.

fees under Massachusetts act, 303.

fees under Ohio act, 171.

medical witnesses under Washington act, 124.

power of Massachusetts board to subpoena and examine, 303.

power of Nevada court to compel attendance, 298.

[References are to Sections.]

WITNESS—*Continued.*

- report of accident under Washington act, 148.
- subpoena under California act, 279.
  - under Michigan act, 355.
  - under Wisconsin act, 251.

WORKMEN,

See EMPLOYES.

- defined, 432.
  - under British act, 572, 577.
  - under Kansas act, 292.
  - under Nevada act, 290.
  - under New York act, 56.

WORK ON SHARES,

- persons not within compensation acts, 434

WORKSHOP,

- defined in Washington act, 124.

WORKSHOP ACT,

- Ohio, 173.

WRITTEN ACCEPTANCE,

- California act by employer, 268.

WRITTEN NOTICE,

- injury, under Massachusetts act, 303.

WURTEMBERG,

- excepted from operation, code 1911, 596.

Y

YAPLE v. CREAMER,

- decision sustaining Ohio act, 172.

Z

ZACHER,

- conclusions of review of German laws prior to 1911, 594.
- guide to German laws prior to 1911, 579-593.

















